

Sample Contract Terms and Conditions
For Enterprise Resource Planning Software
and Implementation Services

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Sample Contract Terms & Conditions

The contractual terms and conditions will be fully negotiated after a vendor is selected by the City (the “City”). Responses to the contract terms outlined in this section may be considered in the selection process and such terms shall be included in the final contract between the City and the Vendor (the “Agreement”). For purposes of these terms and conditions, the term “Vendor” means the vendor responding to this RFP and all such terms shall apply to any Sub-vendor of the Vendor. Use of the term “Exhibit <##>” throughout these contract terms refers to supplemental documents that the City expects will be included in the final contract package.

The following contract terms and conditions, substantially in the form contained herein, are expected to be agreed to by the vendors as part of contract negotiations. The City may choose to add additional terms and conditions during final negotiations. Exceptions must be explicitly noted in the Vendor

Proposals using the terms and conditions exceptions checklist form provided in Attachment C of the RFP. Lack of exceptions listed on the checklist forms shall be considered acceptance of all the terms and conditions as presented in this RFP.

6.1 Scope of Agreement

The City agrees to subscribe to the software detailed in Exhibit <##> and receive the services detailed in the Statement of Work detailed in Exhibit <##>. Vendor agrees to provide Software and Services (the “Solution”), subject to the terms and conditions stated in this Agreement including all Exhibits. Payment for such services shall be per Exhibit <##> and shall not exceed the total amount included in Exhibit <##> without the prior written consent of the City. The City, without prior and mutual written agreement, will incur no other service costs. The service costs in Exhibit <##> are inclusive of all services described in the Statement of Work included as Exhibit <##>. The City agrees to provide server, desktop and other hardware and configuration based on Vendor’s recommendation per Exhibit <##>.

6.2 Change Orders

The Project Managers appointed pursuant to this Agreement will meet periodically to review the Project Schedule. Changes to the scope of the project outside of the original scope of services, including additional Software and Services may be proposed by either party, and if accepted by the parties, the proposed changes shall be reduced to a written document, inclusive of any applicable pricing changes (“Change Order”). Written approval signed by a duly authorized representative of each of the parties of such Change Order must be obtained prior to the provision of any products or services related to such Change Order.

Vendor shall provide to City a written quotation for any changes in this Agreement, including Software, Services, Customizations, etc. Each Change Order shall be reviewed and approved by the City and shall be subject to the requirements in the section.

6.3 Right to Withhold Payment

If the Vendor breaches any provision of this Agreement, the City shall have a right to withhold all payments due to the Vendor until such breach has been fully cured.

6.4 Non-Collusion

Vendor hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm, employee of the City, or other person or entity concerning the obtaining of this Agreement. In addition, Vendor agrees that a duly authorized Vendor representative will sign a non-collusion affidavit, in a form acceptable to the City that Vendor has not received from the City any

incentive or special payments, or considerations not related to the provision of the Software and Services described in this Agreement.

6.5 Vendor Merger or Acquisition

In the event that the Vendor is merged or acquired, the acquiring entity shall honor all of the terms of the existing contract for ten (10) years or until the end of the present Agreement term, whichever is longer.

6.6 Documentation

Vendor shall deliver to City access to an up to date, and vendor managed electronic version of all user guides and technical documentation, that includes documentation on customizations contracted by the City with the Vendor, with no restrictions on number of viewers having access.

6.7 Software Warranty

Vendor represents and warrants that it has the right to grant the license set forth under this Agreement. Vendor further represents and warrants that it has good and marketable title to the Software sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. Vendor further represents and warrants that neither the Software in the form delivered by Vendor to City, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by City, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.

In the event that any third party makes a claim or files a lawsuit challenging City's right to use the Software, Vendor shall defend and indemnify City and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Provided, however, that Vendor shall have the sole and exclusive right to select and retain counsel for City in connection with the defense thereof and shall make all decisions relating to the conduct of the City's defense and any settlement made on behalf of City. In resolving any such infringement claim, Vendor shall, in its reasonable discretion, either procure a license to enable City to continue to use the Software or develop or obtain a non-infringing substitute acceptable to City at Vendor's cost.

Vendor represents and warrants that the Software and related products as described with this Agreement will perform in accordance with all Documentation, Contract Documents, Vendor marketing literature, and any other communications attached to or referenced in this Agreement.

Vendor represents and warrants that the Software and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of City as set forth in the Contract Documents.

Vendor represents and warrants that all Software products provided under this Agreement are compatible with and certified for use and operation in City's operating environment. Furthermore, Vendor acknowledges that it has reviewed the hardware system ordered by City and represents and warrants that such hardware system as defined in Exhibit <##> is sufficient for City's current and reasonably projected use, including account and transaction volumes.

shall be no limit of liability on behalf of the Vendor if the Software is determined to be infringing.

6.8 Software Interfaces

The City has the right to develop interfaces to, and/or database applications that integrate with, the licensed Software using Vendor's recommended database and development tools without voiding the terms or warranties herein.

6.9 Resolution and Response Time Warranty

Vendor warrants that all Resolution and Response Times delineated below shall be adhered to as follows:

Priority 1 support issues are defined as: Mission Critical – Software is down /undiagnosed but feared critical; situation may require a restore and Software use is suspended until a diagnosis is given.

- Response to first call time limit – within two (2) business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within 1 business day and will provide updates every two hours?
- If Vendor and City are on a support telephone call to resolve a Priority 1 support issue at the time that normal support hours end, Vendor support representatives will remain on the call past the normal support hours to provide what assistance can be provided at no additional cost.
- Penalty for not adhering to time limits - City shall receive a ten percent (10%) credit against the Annual Fees, per incident.

Priority 2 support issues are defined as: Critical Issue – Software is not down, but operations are negatively impacted.

- Response to first call time limit – within four (4) business hours.

- Resolution time limit – Vendor shall use its best efforts to resolve within two (2) business days.
- Penalty for not adhering to time limits - City shall receive a ten percent (10%) credit against the Annual Fees, per incident.

Priority 3 support issues are defined as: Non-Critical Issue – resolution period to be mutually agreed upon.

- Response to first call time limit – within twelve (12) business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within four (4) business days.
- Penalty for not adhering to time limits - City shall receive a ten percent (10%) credit against the Annual Fees, per incident.

6.10 Federally Mandated Changes

Vendor shall supply the City with all federally mandated changes to Vendor's Software. Vendor will make a good faith effort to provide the City with these changes within ninety (90) days of their enactment dates prescribed by the aforementioned bodies. In the event that Vendor is unable to supply these changes within ninety (90) days of the enactment, the City will be credited a prorated share of the Annual Fees for every week Vendor is tardy in delivering the required change.

6.11 Future Releases/Upgrades

The City shall be entitled to future releases and upgrades, whether of a "minor" or major" nature, of Software for no additional cost beyond the Annual Fees delineated in Exhibit <##>.

6.12 Solution Longevity

The Vendor certifies that the Software will remain available and fully supported by Vendor for a minimum of five - (should match term of the agreement) from the date the Agreement is signed and that any material changes to Vendor's company or products will not affect the City's implementation or Extended Services of the Software as long as the City pays the Annual Fees.

6.13 Functionality Replacement

The City maintains the rights to the Software functionality that is subscribed to herein, even if that functionality later gets renamed or bundled by Vendor as a new product.

6.14 Undocumented requirements

Undocumented requirements are new requirements that City staff may identify during the implementation. It is anticipated that additional requirements might be identified, or existing requirements may be expanded or removed. It is the responsibility of the Vendor to document updates to the City's requirements and configuration design documents continuously throughout the implementation phase. As part of the implementation phase, the City can identify and introduce new business requirements until the middle of the User's Acceptance Testing milestone, at which point, the implementation requirements will be frozen. As long as these new (undocumented) requirements can be met via the proposed software modules out of the box delivered functionality; the implementation of these new requirements is within the Offeror's fixed fee implementation scope.

6.15 Continuity of Warranty

The City may continue the Software Warranty protection by purchasing and paying for Extended Services described herein. By doing so, all Software Warranty and Resolution and Response Time Warranty conditions included herein shall remain in effect, in perpetuity, as long as the City makes reasonable efforts within the terms of the Agreement to keep payments for Annual Fees current.

6.16 Intellectual Property

All information, data, programs, publications and media created specifically for and paid for by the City or as a result of the Services identified in this Agreement is the property of City unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

6.17 Subcontractors

Vendors may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Vendor must obtain written prior approval from the City for activities or duties to take place at the City site. In using subcontractors, the Vendor agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the Vendor.

6.18 Project Schedule and Acceptance

Vendor will develop a detailed project schedule that details both Vendor and City's responsibilities, timeline for project activities, phases, milestones, and deliverables ("Project Schedule") in connection with Vendor's performance of the Services. The Project Schedule should be in sufficient detail to specify the deliverables, conversion, training, testing, acceptance, configuration, modification, integration, and live operation activities. Both Vendor and City agree that a mutually agreeable Project Schedule will be submitted and approved by the City within forty five (45) days of the date the

Agreement is signed by both parties (“Effective Date”). In the event Vendor is unable to provide the Project Schedule within thirty (30) days, the City will have at its option, the ability to terminate the Agreement and obtain all fees paid to Vendor. The Project Schedule will also include the criteria by which the software will be tested and accepted by the City.

6.19 Vendor Project Team Assignments & Removal

The City shall have the right to approve all vendor project team members including subcontractors assigned to the City by Vendor (“Designated Staff”). Vendor will provide the resumes and an opportunity to interview the proposed Vendor project team members prior to them working on the City implementation project. Vendor agrees to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Vendor will make all reasonable attempts to avoid removal and subsequent changeout of Vendor project resources during the course of the project. Should a change of project resources be required, Vendor will conduct internal turnover meetings and reviews of project artifacts during the transition process prior to introducing new resources to the City. In the event Vendor personnel is/are not providing services consistent with our services warranty or are otherwise negatively impacting the project, you will notify us of that deficiency and give us ten (10) business days to address the issue(s). In the event the deficiency persists, we will replace that project member, upon written request and demonstration of cause. Replacement staff will be assigned following the same processes set forth above and shall have the necessary skills, experience, and knowledge to perform the assigned duties of the project.

The Vendor understands that the successful installation, testing, and operation of the Software that is the subject of this Agreement shall be accomplished by a cooperative effort. To most effectively manage this process, the Vendor shall designate a single representative to act as an ex-officio member of the City’s project management team (“Project Manager”) and who shall have the authority to act on behalf of the Vendor on all matters pertaining to this Agreement.

6.20 Acceptance Testing

For purposes of acceptance of the Solution (or portions thereof), the parties intend to use the following staged acceptance procedure. All timeframes specified in the following procedures may be overridden by the Project Schedule.

Written Deliverable: Vendor may submit interim drafts (stamped, noted or otherwise clearly marked “Draft”) of a written deliverable to the City for review. City agrees to review and provide comments to Vendor on each interim draft within five (10) business days or mutually agreed upon duration after receiving it from Vendor. The City will have the opportunity to review the written deliverable for an acceptance period of five (10) business days after delivery of the final version (stamped, noted or otherwise clearly marked “Final Draft”) of the written

deliverable (the “Acceptance Period”). The City agrees to notify Vendor in writing by the end of the Acceptance Period either stating that the written deliverable is accepted in the form delivered by Vendor or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If Vendor does not receive any such deficiency notice from the City by the end of the Acceptance Period, the written deliverable will be deemed to be accepted and an approved document marked “Approved” and dated will be provided to the City. If City delivers to Vendor a timely notice of deficiencies and the items specified in the notice are deficiencies, Vendor will promptly correct the described deficiencies and return to the City for Acceptance. The City will not unreasonably withhold, delay or condition its approval of a final written deliverable.

Vendor is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to the City and date returned.

Software Deliverable: Acceptance testing is an iterative process designed to determine whether each component of the Software combined with related Services delivered by Vendor (“Software Deliverable”) performs the functions described in the Contract Documents and to discover and remove material deviations where the Software Deliverable does not substantially perform the functions described in the Contract Documents (“Defects”) through repeated testing cycles. In the event of conflicts between Contract Documents and Application Software Documentation the Contract Documents will prevail.

Vendor will work with City and make a good faith effort to develop a test plan with the requisite details, understanding the level of detail required may change depending on the complexity of the requested Software Deliverable and to test each Software Deliverable (the “Acceptance Tests” or “Acceptance Testing”).

1. The “Acceptance Test Period” for each Software Deliverable will be ten (10) business days unless an alternate time is mutually agreed upon between Vendor and City per the Project Schedule. The Acceptance Test Period for each Software Deliverable will start within three (3) business days, unless an alternate start date is mutually agreed upon by Vendor and City per the Project Schedule, after the Software Deliverable is installed at City’s designated site and Vendor has successfully completed Vendor’s installation test and notified City that the Software deliverable is “Ready for Acceptance Testing.”
2. If the City determines during the Acceptance Test Period that the Software Deliverable contains a Defect, the City will promptly send Vendor a written notice reporting the alleged Defect describing it to Vendor in sufficient detail reasonably necessary for Vendor to recreate it. Vendor will modify the Software Deliverable to remove the reported Defect and will provide the

modifications to the City for re-testing. The City will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from Vendor. In such a case, Vendor and City will mutually agree upon an updated Acceptance Test Period.

3. By the end of the Acceptance Testing Period City will provide Vendor with a final written list reporting any outstanding Defects (the "Punch List"). City will then have ten (10) business days or mutually agreed upon time frame after the receipt of the modifications to re-test the modified Software Deliverable to confirm that the Defects that were reported on the Punch List have been removed. If any Defects that were reported on the Punch List have not been removed, City will provide Vendor with written notification by the end of the retesting period reporting any such Defects. In such event, the procedures set forth in this section will be repeated for the remaining Defects on the Punch List.
4. Vendor and City each agree to work diligently to achieve acceptance of Software Deliverable at the earliest possible date.
 - a. "User Acceptance Testing" shall mean testing of each Phase identified in the Project Schedule using the process defined above for Software Deliverable.
 - b. "Conditional Acceptance" will occur upon the earlier of correction of Defects reported as part of User Acceptance Testing of the Phase or Go-Live of the Phase. There will be a Conditional Acceptance for each Phase; Conditional Acceptance after the final Phase constitutes Conditional Acceptance of the entire Solution. Unless the Project Schedule determines otherwise, the Acceptance Test Period for User Acceptance Testing will be thirty (30) calendar days, Vendor and City will work diligently to put the Phase into Go Live operations.
 - c. "Final Acceptance" involves use of the Solution in totality in production operations for a period of forty-five (45) calendar days, provision of all Services by Vendor, and completion of the Phases and/or the Software previously tested and meeting Conditional Acceptance. If after forty-five (45) calendar days the Solution performs without Defects, City and the Vendor will both issue and execute a "Final Acceptance" of the Solution. The forty-five (45) day period for Final Acceptance will stop if Defects are found during production use and prevent further production use of the Software. The Final Acceptance process will resume on the date the Defect is confirmed as fixed and will continue for the remainder of the forty-five (45) day period. There will be a Final Acceptance for each Phase; Final Acceptance after the final Phase constitutes Final Acceptance of the entire Solution.

6.21 Professional Services Warranty

Vendor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Vendor agrees that, at all times, the employees of Vendor furnishing or performing any services shall do so in a proper, and dignified manner.

Vendor agrees that all persons working for or on behalf of Vendor whose duties bring them upon the City's premises shall obey the rules and regulations that are established by the City and shall comply with the reasonable directions of the City's officers. The City may, at any time, require the removal and replacement of any of Vendor's employees for good cause.

Vendor shall be responsible for the acts of its employees and agents while on the City's premises. Accordingly, Vendor agrees to take all necessary measures to prevent injury and loss to persons or property located on the City's premises. Vendor shall be responsible for all damages to persons or property caused by Vendor or any of its agents or employees. Vendor shall promptly repair, to the specifications of the City, any damage that it, or its employees or agents, may cause to the City's premises or equipment; on Vendor's failure to do so, City may repair such damage and Vendor shall reimburse City promptly for the cost of repair.

Vendor agrees that, in the event of an accident of any kind, Vendor will immediately notify the City's contact person and thereafter, if requested, furnish a full written report of such accident.

Vendor shall perform the services contemplated in the Agreement without interfering in any way with the activities of the City's staff or visitors.

Vendor and its employees or agents shall have the right to use only those facilities of the City that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the City. The City shall also extend parking privileges to properly identified members of Vendor's full-time staff on the same basis as they are extended to the City's staff.

The City shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Vendor or its employees or subcontractors.

6.22 Ineffective Training

Vendor will submit to City an agenda in advance of any training sessions to be covered with the key materials provided during the course of the training. Further, Vendor will provide to the City details associated with the layout of the training facility, computer requirements, as well as all associated media necessary to deliver the course. The City may conduct a rating of the course after its completion and communicate the results of this rating to Vendor for future class improvements. In the event that

the City asserts in good faith that any Vendor training consultant lacks the skill or capability to adequately train the City's staff, Vendor shall replace such training consultant as soon as reasonably possible. If the City notifies Vendor within ten (10) business days of the completion of said training, that in the City's reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then Vendor shall provide a credit in training days to the City for all such training sessions.

6.23 Location of Data

Contractor will not at any time store City data on hardware located outside the United States. Additionally, the data may only be accessed by individuals located in the United States. Contractor will not at any time store or transfer Client data on hardware located outside the Lower contiguous 48 United States. Additionally, the data may only be accessed by individuals located in the United States.

6.24 Provision of City Data upon Termination

Upon termination or non-renewal of this Agreement, Vendor will promptly provide City data to City then residing in Vendor's hosted environment. City data shall be provided in a format as may be mutually agreed. Such City data will be provided as requested by the City, and in no instance later than sixty (60) days prior to the date of expiration or termination, as applicable, (provided at least 10 days advance notice by City) and again seven (7) days after date of expiration or termination, as applicable.

6.25 Transition Services

Upon expiration or termination of this Agreement, upon City's request, Vendor will cooperate with City and provide services that are reasonably necessary to effectuate an orderly transition to a new system, solution, or provider, provided that City shall pay Vendor's then-current rates for such services. Such cooperation and services shall include assistance with data conversion and, at Vendor's option may include the provision of file layouts to City on a confidential basis for the purpose of identifying the data Vendor provided to City.

Data should be returned to the customer in both the SaaS vendor's native data format and a platform-agnostic format (e.g. MS SQL) with appropriate data schemas and dictionaries. Once a successful hand-off of that data has been confirmed, all customer data should be permanently removed from all SaaS vendor servers.