

K21-596

PROFESSIONAL SERVICES AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

GOVERNMENTJOBS.COM, INC. (DBA "NEOGOV")

RFP No. 962

EMPLOYEE PERFORMANCE AND APPRAISAL SOFTWARE

THIS PROFESSIONAL SERVICES AGREEMENT (the "**Agreement**") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**" or the "**Customer**"), and GOVERNMENTJOBS.COM, INC. (DBA "**NEOGOV**"), represented by Ana Alfaro, Revenue Accounting Manager (the "**Contractor**"). The City and the Contractor may sometimes be collectively referred to as the "**Parties**." The Agreement is effective as of February 9, 2021 (the "**Effective Date**").

RECITALS

WHEREAS, on December 16, 2020, the City issued a request for proposals No. 962 to qualified contractors under the RFP to provide professional services including a commercial off-the-shelf software solution ("**Perform Software**") to conduct employee performance appraisals and performance management to be used for approximately 6000 city employees in over 20 departments (the "**RFP**");

WHEREAS, the City issued Addendum No. One (1) on December 16, 2020, Addendum No. Two (2) on December 21, 2020, and Addendum No. Three (3) on January 12, 2021 (mistakenly identified as January 12, 2020 on said addendum); and

WHEREAS, the Contractor submitted a proposal dated January 14, 2021, and the City has selected the Contractor to perform the professional services described in the RFP.

NOW THEREFORE, the City and the Contractor agree as follows:

ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

A. Services ("Services"). The Contractor will, in accordance with the schedule approved by the City:

1. Provide professional services and software-as-a-service ("**SaaS**"), including, but not limited to, a commercial off-the-shelf software solution to conduct employee performance appraisals and performance management to be used for approximately 6000 city employees in over 20 departments;

2. Provide electronic storage and management of web-based employee evaluation instruments that are accessible from both the City's network and remotely;

3. Require a unique username and password for each user (“**Authorized User**”). “**Authorized Users**” means (i) City employees, agents, contractors, consultants who are authorized by City to access and use the Services under the rights granted to City pursuant to this Services Agreement and (ii) for whom access to the Services has been purchased hereunder;

4. Ensure the security of all data;

5. Show all reporting relationships, including the employees who report to the Authorized User via a dashboard or settings viewable by the Authorized User;

6. Allow all appraisal responses to be completed by the employee and their supervisor annually and, if desired, semi-annually, with the ability to set permissions and access to a range of users, including administrators, supervisors, and employees;

7. Send out repeated emails notifying Authorized Users when their feedback period is approaching, when it has started, when it is due, and notify managers or Human Resources administrators if feedback is not completed by the due date;

8. Provide Human Resources administrators with the status of appraisal completion by Authorized User and by department (*e.g.*, the appraisal has been completed by three peers, but not by two others, or it has been completed by the employee but not the supervisor);

9. Allow the system administrator to set up the text of employee appraisal and provide a space for narrative responses;

10. Allow administrators and supervisors to set up the text of employee performance goals and leaves a space for numerical free text, numerical ratings, yes/no/not applicable, or narrative responses;

11. Allow appraisals to be conducted as 360-degree evaluations with responses provided by the employee, their supervisor, their peers, and their subordinates;

12. Allow the system administrator to customize workflows (*i.e.*, who approves the appraisal forms) as processes evolve over time, without the assistance of the Contractor or code development;

13. Allow managers to create development and/or performance improvement plans for each employee;

14. Generate charts, graphs and reports as PDF, Word, or comma separated values (“**CSV**”)/Excel files directly from the software tool and/or produces csv/Excel data extracts that are user friendly and highly configurable based on business analytics needs that may evolve over time, without the assistance of the Contractor or code development;

15. Produce (i) report(s) to analyze which employees are strong on particular competencies or as a tool to determine how best to use personnel or to identify employees who could train other employees in those competencies and (ii) report(s) for the administrator or supervisor at each level to see the average ratings given by each evaluator in order to determine which evaluators tend to rate employees high or low, or repeat the same rating for their subordinates;

16. Provide a save and return feature, so reviews do not have to be completed at one time;

17. Allow files (excel, pdf, word documents) to be attached to appraisals;
18. Have the ability to export data from the database (any table, any table field) to CSV file or direct file transfer to another third-party product at the City's direction;
19. Provide an integration function to integrate with ADP Payroll services to ensure that new employees or changes in any employee's job title, organizational assignment, and/or reporting structure is automatically updated in the solution;
20. Provide a journal function in which the supervisor can keep notes on their employee throughout the year and attach related files;
21. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFP; the Contractor's proposal dated January 14, 2021;
22. Submit complete and accurate invoices (Article I Section E), maintain records (Article I Section F), submit to audits and inspections (Article I Section G), maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;
23. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;
24. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and
25. Cooperate with the City and any person performing work for the City.

The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with the Civil Service Rules, and will perform all work under this Agreement in accordance with the same degree of care, skill, and diligence as would be ordinarily exercised by a competent practitioner of the same profession in providing similar services in major United States metropolitan areas under the same or similar circumstances. The Contractor's failure to meet or exceed any of the foregoing standards and warranties may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Article V, in addition to any other remedies available in law or in equity.

C. Compliance with Laws. The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

D. Schedule.

1. The Contractor will perform all work under this Agreement according to the following schedule: Provide all services on a continuous basis throughout the Term of the Agreement.

2. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices.

1. The Contractor will submit one yearly invoice for the total amount due and payable during the initial Term of this Agreement to the City electronically, via the City's supplier portal. Future annual renewal terms will be extended and payment for the total amount due for next the yearly term paid prior to commencement of Services for that term as stated in the Order Form will be made by amendment on the anniversary of the Effective Date of this Agreement, provided, however, that there must be a fully executed Amendment between the Parties before the City will issue payment in accordance with the terms and conditions herein. The Parties agree to use reasonable best efforts to conclude the amendment process prior to the start of the next yearly term, beginning February 9, 2022. The Contractor will submit said invoice no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information and supporting documentation:

- a. Name of Contractor;
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or Purchase Order Number issued by the City (*i.e.*, K21-596; 2513);
- e. Name of the City Department to be invoiced (*i.e.*, the Department of City Civil Service);
- f. Itemized description of the SaaS subscription fees, Services to be provided, and/or any other line items.

2. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

F. Records and Reporting.

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

G. Audit and Inspection.

1. With three (3) days prior written notice to Contractor, the Contractor will submit to City audit, inspection, and review and, at the City's request, will make available documents relating or pertaining to this Agreement maintained by or under the control of the Contractor,

its employees, agents, assigns, successors and subcontractors, during regular business hours at the Contractor's office or place of business in Louisiana no more than once in any quarter, at the City's expense, and in a manner that does not unreasonably interfere with Contractor's business operations. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

H. Insurance.

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement. If the Contractor maintains broader coverage and/or higher limits than the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

a. Minimum Requirements:

- i. Workers' Compensation & Employers Liability Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
- ii. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- iii. Cyber Liability Insurance to the Contractors profession, with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Policy shall be sufficiently broad to include but not limited to coverage for losses arising from the breach of information security or cyber liability including Errors & Omission, Security and Privacy Liability, Media Liability, involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.
- iv. Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with

the foregoing insurance requirements shall limit of relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work. Contractor shall be responsible for any losses, expenses, damages, claims and/or suits of any kind which exceed the Contractors limits of liability that arise from the Contractor's actions in performance of work under the Agreement.

b. Additional Insured Status: The Contractor will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this Agreement. Additional Insured status can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

- i.** Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor liability shall be covered by the Contractor.
- ii.** The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.
- iii.** The Additional Insured box shall be marked "Y" or Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation/Employers Liability and Property.
- iv.** Primary Coverage: On the CGL policy, the Contractors insurance coverage shall be primary insurance for Contractor's actions in delivering Services as respects the City, its departments, political subdivisions, officers, official, and employees. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage for Contractor's actions in delivering Services.
- v.** Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 3 years after the termination of this Agreement.
- vi.** Waiver of Subrogation: On the CGL policy, the Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.
- vii.** Notice of Cancellation: Each insurance policy required above shall not be canceled or expire without renewal except without prior notice to the City of no less than 30 days.

- viii. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

c. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: Employee Performance Appraisal Software RFP No. 962 within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

- i. Proof of coverage for each policy of insurance required by this Agreement (i.e., the Contractor's Certificate of Insurance).
- d. Without notice from the City, the Contractor will:
 - i. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
 - ii. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
 - iii. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

I. Indemnity.

1. Contractor General Indemnity. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all third party claims associated to Contractor's actions or omissions in delivering Services, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: (i) for loss of life or injury or damage to persons or tangible property arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement, (ii), any infringement or alleged violation of any United States patent right or copyrights, trade secret, trademark, or service mark or other proprietary or intellectual property rights to any third party; (iii) and for any and all claims, demands, suits, judgments of sums of money accruing against Indemnified Parties, liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement. For avoidance of doubt, the provisions of Article XIII – Additional Provisions, Section II - Limitation of Liability shall not apply with respect to claims that are the subject of indemnification pursuant to this Article I Section I(1).

2. Limitation to Contractor General Indemnity. The Contractor's indemnity does not extend to any loss arising from the (i) negligence or willful misconduct of any of the Indemnified Parties; (ii) third-party materials or data not furnished by the Contractor or not previously

approved by the Contractor; (iii) access to or use of the Contractor's materials in combination with any hardware, system, software, network, or other materials or service not provided by Contractor or specified for City's use in the Contractor's documentation; (iv) modification of the Contractor's documentation by the City or City Authorized User (other than by or on behalf of Contractor; or with Contractor's written approval in accordance with Contractor's written specification); or (v) failure by the City to timely implement any Updates, as defined hereinunder.

3. Limitation to Contractor Infringement Indemnity. The foregoing indemnity shall not apply to Infringement Claim(s) arising out of (i) use of the Contractor's Services or products in combination with other products and services not furnished by the Contractor or not previously approved by the Contractor; (ii) use in a manner not normally intended or any modification of the Contractor's Services by the City; (iii) materials or content transmitted, accessed or received by the City and/or the City's Authorized Users through the use of the Contractor's Services; (iv) the use of the Contractor's Services by the City and/or the City's Authorized User in violation of, or in connection with a violation of, the Agreement or applicable laws; (v) to any patent, copyright or trademark in which the City has a direct or indirect interest, or (vi) if the City has not provided the Contractor with prompt notice, thereby prejudicing the Contractor's right or ability to defend against same with reasonable assistance necessary to defend the action. At the Contractor's election, the Contractor may, at its sole expense, elect promptly to do any of the following: (a) procure the right for City to continue using the Services under the Agreement; (b) modify the applicable Service so it is no longer infringing; or (c) replace the applicable Service with non-infringing products or services that are functionally equivalent or superior in performance; or (d) terminate the Service without liability. The foregoing states the entire liability of the Contractor for patent, copyright and trademark infringements by the products and services.

4. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

5. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the City that:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. The Contractor has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Contractor's most favored customer for the same or substantially similar services;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

B. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

C. Non-Solicitation Statement. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

D. Employee Verification. The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this

Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

A. **Administration.** The City will:

1. Administer this Agreement through the Civil Service Department (the "Department");
2. Provide the Contractor employee counts, and other documents deemed necessary for the Contractor's performance of any work required under this Agreement; and
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. **Payment.** Unless otherwise agreed to by the City, the payment terms are NET 30 days and payment is contingent upon this Agreement being fully executed and the Contractor's delivery and the City's receipt of the properly submitted, complete, and accurate invoice via the City's supplier portal. The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
2. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.
3. If this Agreement is terminated for cause, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement. The Contractor will refund the City the pro-rata portion of the compensation paid to the Contractor

ARTICLE IV - COMPENSATION

A. **Rate of Compensation.**

1. The City will pay the Contractor in accordance with the following rate: \$77,053.50 per first year Services for: SaaS subscription fees for the Perform Software, the Contractor's Obligations as set forth in in Article I, "NEEDED SERVICES" as set forth in Attachment "A" to RFP No. 962, and otherwise with respect thereto.

- a. The Compensation shall remain fixed for the initial 1-year term of the Agreement. Upon each permitted extension of the term of the Agreement, either Party may submit a written request for an adjustment of the costs no later than 60 (sixty) days prior to the Agreement's expiration date (*i.e.*, the end of the current term). Consideration of cost adjustments shall be limited to 5% from the prior Term Fees.
 - b. In the event that the Parties mutually agree upon a cost adjustment, the Parties shall memorialize the cost increase in a written amendment to the Agreement.
 - c. In the event that the Parties do not mutually agree upon a cost adjustment, the City reserves its right to terminate the Agreement in accordance with the provisions contained herein and/or re-procure in accordance with all state and local requirements.
2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.
3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

B. Maximum Amount. The maximum aggregate amount payable by the City for year one (1) of this Agreement is \$77,053.50, provided, however, that the Parties acknowledge and agree that this provision does limit the amount that may be payable by the City in future renewal years.

C. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations."

ARTICLE V - DURATION AND TERMINATION

A. Initial Term. The term of this Agreement shall be for one (1) year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. Extension. This Agreement may be extended at the option of the Parties, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended for 4 additional one-year terms.

C. **Termination for Non-Appropriation.** In the event that, in the current or any subsequent fiscal year, the City fails to appropriate sufficient funds to fund the Agreement, the City may either (a) terminate the Agreement, or (b) propose an amendment to the Agreement for an amended definition of the Services and at a lower price. Any such amendment shall require the mutual agreement of the parties. It is expressly agreed that City shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In any event, the Contractor shall be paid in accordance with the Agreement for Services performed through the date of termination.

D. **Termination for Cause.** Except as otherwise set forth in Article VI Section B - *Failure to Perform*, the City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General.

ARTICLE VI- PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the Contractor according to the work performed in compliance with the terms of the Agreement.

B. **Failure to Perform.** If the Contractor fails to perform its obligations set forth in Article I – *Contractor's Obligations*, the City will notify the Contractor in writing of the defect. The Contractor will have a period of thirty (30) days from receipt of the City's notice to cure the defect. If the Contractor does not cure the defect within thirty (30) days and there is a continued lack of performance, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VII – LIVING WAGES

A. **Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. **Compliance.** To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that

is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. **Living Wage**. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023;
and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. **Adjusted Living Wage**. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

E.

F. **Subcontract Requirements**. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a new subcontract during the Term of this Agreement, shall notify subcontractors in writing of the requirements and applicability of Article VII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

G. **Reporting**. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

H. **Compliance Monitoring**. Covered Employers under this Agreement are subject to annual compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”) in a manner that does not disrupt Contractor’s business operations and at City expense. Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage

requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

I. **Remedies.** If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE VIII - FORCE MAJEURE

A. **Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. **Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. **Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
 - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
 - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE IX - NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. **Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. **Incorporation into Subcontracts.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts for services related to this Agreement entered into by the Contractor during the Term of this Agreement, by reference or otherwise, and will require all subcontractors to comply with those provisions. For purposes of this Section, subcontractors shall mean any persons or firms hired to perform obligations or assigned to perform a specific project under the terms of this Agreement.

D. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE X - INDEPENDENT CONTRACTOR

A. **Independent Contractor Status.** The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. **Exclusion of Worker's Compensation Coverage.** The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(7), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E)(12) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XI - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Civil Service Department
Attn: Amy Trepagnier
1340 Poydras Street, Suite 900
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Contractor:

Governmentjobs.com, INC. (dba "NEOGOV")
Attn: Mike Burns
300 Continental Blvd. Suite 565
El Segundo, CA 90245

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XII - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless

and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. **Assignment.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent, which cannot be unreasonably, withheld, conditioned, or delayed. For purposes of clarity, any merger, consolidation, or reorganization involving the Contractor, whereby the rights and obligations of the Contractor will pass to a successor entity pursuant to Louisiana Civil Code Article 1984 (e.g., the Contractor enters into a merger, whereby the Contractor is the disappearing entity) will be considered a transfer of rights, obligations, or performance under this Agreement, and the Contractor will be obligated to provide notice or obtain consent from the City for continuation of services, and the City may decide an amendment is necessary to memorialize this amendment or modification to the Agreement. The City may also require the surviving entity Contractor to register to new entity as a vendor into the City's budget, requisition, and accounting services system ("BRASS") at no additional cost to the Contractor, and to provide the City with new supporting documents in accordance with CAO Policy 122R Appendix "E" (i.e., Tax Clearance, Proof of Good Standing, Certificate of Insurance, Notarized Ban-the-Box Affidavit, Proof of Signatory Authority, etc.).

C. **Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

D. **Compliance with City's Hiring Requirements – Ban the Box.**

1. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirement is necessary.
2. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow the Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.
3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.
4. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-contractors to comply with those provisions.

E. **Conflicting Employment.** To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept other employment, which potentially conflicts with this Agreement, and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

F. **Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

G. **Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

H. **Jurisdiction.** The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

I. **Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

J. **No Third-Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

K. **Non-Exclusivity.** This Agreement is non-exclusive, and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

L. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

M. **Ownership Interest Disclosure.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no

other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days’ written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

N. **Protection of Work Product.** The City will treat the Contractor’s Proprietary Rights and/or Trade Secrets in accordance with applicable Louisiana Public Records Law, La R.S. 44:1 *et seq.* The Parties acknowledge and agree that to trigger the protections set forth in Louisiana Public Record’s Law, any information that the Contractor believes to be proprietary and/or trade secret information shall contain a cover sheet that provides in bold type “DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION” pursuant to La R.S. 44:3.2.

O. **Ownership of Records.** The Contractor provides software as a service. “**Contractor Software**” means the Contractor’s Perform Software or any other software which is proprietary to the Contractor for the purposes of providing the Services or performing the Contractor’s obligations under this Agreement. At all times, the Contractor shall retain all ownership of its proprietary Contractor Software. The Contractor’s “**Proprietary Rights**” shall mean all rights held by the Contractor in the Contractor Software and the Contractor’s confidential information (“**Contractor Confidential Information**”), including, but not limited to, patents, copyrights, authors' rights, trademarks, tradenames, know-how and trade secrets. The Parties agree and acknowledge that the City may access and use the Contractor Software, and the City shall retain ownership to its own data, as set forth hereinunder.

P. **City & Platform Data.**

1. “**City Data**” shall mean all data that is owned or developed by the City, whether provided to the Contractor by City or provided by a third party to Contractor in connection with Contractor’s provision of Services to the City, including Personnel or Job Seeker Profile Data collected, loaded into, or located in the City data files maintained by the Contractor. The Contractor intellectual property, including the Services, Contractor Confidential Information, and Platform Data do not fall within the meaning of the term “**City Data**”. The City exclusively owns all right, title, and interest in and to all City Data. City grants Contractor a license to host, use, process, display, create non-personal derivative works of, and transmit City Data to provide the Services.

2. “**Platform Data**” shall mean any data owned or developed by the Contractor, reflecting the access or use of the Services by or on behalf of the City or any Authorized User, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data. or other analysis, information, or data based on or derived from any of the foregoing The City acknowledges that the Contractor may compile Platform Data based on City Data input into the Services. The City agrees that the Contractor may (i) make Platform Data publicly available in compliance with applicable law, and (ii) use Platform Data to the extent and in the manner permitted under applicable law.

Q. **Prohibition of Financial Interest in Agreement.** No elected official or employee of

the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

R. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

S. **Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

T. **Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

U. **Subcontractor Reporting.** Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted. For purposes of this Section, subcontractors shall mean any persons or firms hired to perform obligations or assigned to perform a specific project under the terms of this Agreement.

V. **Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law, shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

W. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

X. **Delivery and Subscription Grant.** "SaaS Applications" means each proprietary Contractor web-based software-as-a-service application may be set forth on an Order and

subsequently made available by Contractor to City, and associated components as described in the Service Specifications made available to City by Contractor. For the purposes of this Agreement, the SaaS Applications available to the City shall be limited to the Contractor's Perform Software and/or the Needed Services competitively procured via RFP No. 962. Subject to and conditioned on City's and its Authorized Users' compliance with the terms and conditions of this Agreement, Contractor hereby grants to City a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) access and use, and to permit Authorized Users to access and use, the SaaS Applications specified in the Order solely for City's internal, non-commercial purposes; (b) generate, print, and download City Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "**SaaS Subscription**").

Y. Content and Program Documentation. Should City purchase access to SaaS Applications containing audio-visual content ("**Licensed Content**"), the Contractor grants to the City a non-exclusive, non-transferable, and non-sublicensable license, during the applicable Term, for Authorized Users to access and view the Licensed Content within the SaaS Application. The City shall not permit the Licensed Content to be, or appear to be, reproduced, performed, displayed, or distributed on, as part of or in connection with any website or other online area other than the SaaS Application. The City shall not edit, alter, modify, combine with other content, or create any derivative works of the Licensed Content. "**Program Documentation**" shall mean all user guides, training, and implementation material, and Service descriptions provided by the Contractor to the City in connection with the Services. The Contractor hereby grants to City a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for City's internal business purposes in connection with its use of the Services.

Z. Maintenance, Updates, Upgrades. Contractor maintains Contractor's hardware and software infrastructure for the Services and is responsible for maintaining the Contractor server operation and Contractor database security. Contractor may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying Contractor software that Contractor makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon City's next login to the Services following an Update at no additional cost to City. "**Upgrade**" means any update of the Services or underlying Contractor software such as platform updates, and major product enhancements and/or new features that Contractor makes commercially available. Contractor shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. Contractor shall have no liability for, or any obligations to, investments in, or modifications to City's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services. The Contractor shall make the version of the SaaS software that was competitively procured accessible to the City at all times during this Agreement, as amended.

AA. Training Materials; Support. Primary training of Contractor Services is conducted by self-review of online materials. Contractor's pre-built, online training consists of a series of

tutorials to introduce the standard features and functions (the “**Training Materials**”). The Training Materials may be used as reference material by City Personnel conducting day-to-day activities.

BB. **Implementation.** For Services requiring implementation, Contractor implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Ordering Document. Contractor personnel will provide consultation on best practices for setting up the Services, answer City questions during the implementation period, and ensure Authorized User Admins grasp the system.

CC. **Support.** Phone support for the Services is available to City Monday through Friday, excluding Contractor holidays. Online support for the Services is available 24 hours a day, seven days a week. The length of time for a resolution of any problem is dependent on the type of case.

DD. **Limitations.** Unless otherwise specified in the Ordering Document, this Agreement does not obligate Contractor to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.

EE. **Contractor Intellectual Property.** Contractor shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by Contractor including all Services, SaaS Applications, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of Contractor and all proprietary rights embodied therein (collectively, the “**Contractor Intellectual Property**”). This Agreement does not convey or transfer title or ownership of the Contractor Intellectual Property to City or any of its users. All rights not expressly granted herein are reserved by Contractor. Other than recommendation use or as required by law, all use of Contractor Trademarks must be pre-approved by Contractor prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.

FF. **Data Responsibilities.** City is solely responsible for the user access management, development, content, operation, maintenance, and use of City Data. Contractor will have no responsibility or liability for the accuracy of the City Data prior to receipt of such data into the Services. City shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of Authorized Users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom City Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any City Data. Contractor is not responsible for lost data caused by the action or inaction of City or Authorized Users. Unless vital to provide the Services or otherwise mutually agreed in writing, City shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.

GG. **Breach Notice.**

1. In the event that a data or security breach, as defined by applicable law becomes suspected by either Party, the suspecting Party shall notify the other Party. The Contractor will immediately initiate remedial actions and notify City of the steps being taken to investigate and/or remedy the data or security breach within seventy-two (72) hours of breach discovery.

2. Either Party, as the case may be, is solely responsible for complying with applicable data breach notification laws and fulfilling any third-party notification obligations related to any data breach(es). Either Party's reported suspicion, notification of, or response to, a data or security breach under this Section will not be construed as an acknowledgement of fault or liability with respect to the breach.

HH. **Representations, Warranties, and Disclaimers.**

1. **Service Performance Warranty.** In addition to the "Standards" set forth in Article I Section B, the Contractor warrants that it provides the Services using a commercially reasonable level of care and skill.

2. **No Other Warranty.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. CONTRACTOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

3. **Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** CONTRACTOR DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE CONTRACTOR SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH CONTRACTOR WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL COMMERCIALY REASONABLE APPROPRIATE ACTIONS TO REMEDY AND AVOID SUCH EVENTS, CONTRACTOR CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, CONTRACTOR DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE FLOW OF DATA, INTERNET SERVICES PROVIDED, OR CONTROLLED BY THIRD PARTIES.

4. **Services Do Not Constitute Advice or Credit Reporting.** Contractor does not provide its customers with legal advice regarding compliance, data privacy, or other relevant applicable laws in the jurisdictions in which the Services are used. THE CITY ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY THE CITY AS

EITHER LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR TAX ADVICE. TO THE EXTENT THE CITY REQUIRES ANY SUCH ADVICE, THE CITY REPRESENTS THAT IT WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR OTHER PROFESSIONALS. THE CITY SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE ITS OPERATES, HAS EMPLOYEES, AND CAN CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE. THE CITY ACKNOWLEDGES THAT CONTRACTOR IS NOT A "CONSUMER REPORTING AGENCY" AS THAT TERM IS DEFINED IN THE FAIR CREDIT REPORTING ACT AS AMENDED.

5. **Configurable Services.** The Services can be used in ways that do not comply with applicable laws and it is City's sole responsibility to monitor the use of the Services by the City or the City's Authorized Users to ensure that such use complies with and is in accordance with applicable law. In no event shall the Contractor be responsible or liable for City failure to comply with applicable law in connection with the City's or/a City Authorized User's use of the Services. Contractor is not responsible for any harm caused by users who were not authorized to have access to the Services but who were able to gain access because usernames, passwords, or accounts were not terminated on a timely basis by City. City acknowledges that Contractor exercises no control over specific human resource practices implemented using the Service or City's decisions as to employment, promotion, termination, or compensation of any personnel or Authorized User of the Services. City further agrees and acknowledge that Contractor does not have a direct relationship with City employees and that City is responsible for all contact, questions, City Data updates and collection with City employees.

II. Limitations of Liability.

1. **EXCLUSION OF DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, PROVIDED THAT THIS LIMITATION TO DIRECT DAMAGES SHALL NOT LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER ARTICLE I SECTION I.

2. **CAP ON MONETARY LIABILITY.** WITHOUT LIMITATION OF THE PREVIOUS SECTION EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED (E.G., LA. C.C. ARTICLE 2004)

CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF CONTRACTOR'S INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY FOR DIRECT ACTIONS UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED TWO TIMES (2X) MAXIMUM AGGREGATE AMOUNT OF THE AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION SHALL NOT APPLY TO CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION PURSUANT TO ARTICLE I SECTION I.

ARTICLE XIII - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 29th of December, 2021.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Wyle

GOVERNMENTJOBS.COM, INC. (DBA "NEOGOV")

BY: 
Ana Alfaro, Revenue Accounting Manager


FEDERAL TAX I.D.

[END OF AGREEMENT]