

City of Rochester
Request for Proposals
Law Department Case Management System

Proposals to be received by 12:00 PM

March 24, 2025

Submit Proposals to:

Patrick Beath

Law Department

Patrick.beath@cityofrochester.gov (585) 428-6812

REQUEST FOR PROPOSAL

The City of Rochester (“City”) is seeking proposals from qualified consultants (“Consultant(s)”) to provide a case management system for the Law Department to help with file retention and organization (the “Project”). Respondents should have expertise in creating a software made for a medium-large law firm where files are accessible by a legal team and can be easily tracked.

1. BACKGROUND

The City of Rochester is a mid-sized city of approximately 210,000 people located in the upstate New York Finger Lakes region. The Rochester Law Department (“Law”) is responsible for legal services for the municipality. Law has approximately 15 attorneys and 10 paralegals and support staff. This Project’s goal is to offer a case management and document management system so that Law can better track files along with a system that will allow for multiple attorneys and paralegals to keep tabs on files together and at a moment’s notice. The ideal system will also include an interface for client agencies and departments to seek legal assistance and communicate with the Law Department concerning specific matters. The Consultant will be responsible for any training materials, software and programs, or any other equipment necessary to provide Law staff.

2. Timeline

| Activity | Time | Date |
|--|----------|-------------------|
| RFP Release | | February 10, 2025 |
| Deadline for questions | | February 24, 2025 |
| Response for questions submitted | | March 10, 2025 |
| Proposals due | 12:00 pm | March 24, 2025 |
| Consultant Selection and Award Notification | | May 5, 2025 |
| City Council Approval of agreement with Consultant | | June 17, 2025 |
| Agreement Start Date | | July 1, 2025 |

The dates shown above may be subject to change within the City's sole discretion and upon written notification as set forth herein.

3. Communications

All communications by parties who have indicated an intent to submit or have submitted a proposal in response to this RFP ("Respondents"), including any questions or requests for clarifications, submission of the proposal, requests for status updates about the proposal selection process and any other inquiries whatsoever concerning this RFP shall be sent, in writing, to the following City staff person ("City Contact"):

Patrick Beath, Esq.
City Hall, 30 Church Street
Room 400A
Rochester, New York 14614
Patrick.beath@cityofrochester.gov
(585) 428-6812

Please note: communications are to be electronic mail *ONLY*

No contact is permitted with any other City staff member with regard to this RFP during the RFP process unless specifically authorized in writing. Prohibited contact may be grounds for disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all timely questions submitted via e-mail to the City Contact by the question deadline stated above. Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the City's web page for this RFP. The City's failure to timely respond or provide responses to any questions shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

The City will make every reasonable effort to keep Respondents informed about the RFP process. Notifications about the above mentioned Timeline date changes, amendments to the RFP and other information about the RFP will be sent by e-mail to Respondents who have provided an e-mail address to the City Contact and will be posted on the City's website for this RFP. The City's failure to provide such information shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

4. SCOPE OF SERVICES

The City is seeking the services of a Consultant to perform the following services to implement the Project. Respondent's proposal shall address each of the following services, with a separate cost and timeline for each identified task. The proposal shall address each of the requested services, using the same identifying language, including any paragraph or section numbers or letters as used in the RFP.

Law consists of a litigation team and a transactional team. Both teams currently use a local drive to track different matters and maintain documents. Law also maintains a Microsoft Access database of all claims and litigations that captures basic information about claims and lawsuits, and major actions taken as well as status of each such matter. The City, generally, has implemented Infor CloudSuite for use by other departments in organizing those departments' workflows and data.

Law primarily uses personal computers and laptops, both of which are on a secure Local Area Network with the ability to connect to a Virtual Private Network through Paloalto's Global Protect System. These workstations currently operate on a Windows X and utilizing Microsoft Office for email and other programs.

Law is seeking a single, unified system that can be used by everyone in the department to meet all data collections and document organization needs. The system should also provide an interface for client agencies and departments to seek legal assistance and communicate with the Law Department concerning specific matters. Respondents must respond to each of the individual functional requirements listed below. Respondents must provide a detailed explanation if Respondent's proposed system does not fully provide any of the required functions, including if it may partially meets the requirement, with justification describing how Respondent's system meets the City's needs with alternative functions. Additional consideration will be given to proposals that include case management and records management within the same database. Features should include:

1. Ability for client departments/agencies to use system to seek advice or request assistance, for Law to assign matter number, and thereafter to track the matter and interface with the department about the matter
2. Electronic records management
3. Ability to create forms and templates
4. Searchable database by keyword/dates/file name

Listed below is a high-level summary of the functional requirements:

1. Required Functioning:

The case management system must provide, at a minimum, the following capabilities:

- A. Track the status of case files.
- B. Ability to record details related to a single person or entity, including the ability to capture involvement in multiple cases.
- C. Ability for multiple users to enter and save notes to file. Notes function should be searchable, at a minimum, by date, author, and type.
- D. Ability to track events that show all actions related to a case and/or person and include fields to track date, time, location, result, and parties involved.
- E. Ability to assign tasks for specific cases.
- F. Document generation and management to create all legal documents, letters, labels, and manage all documents stored within the same case. Includes the ability to create document templates and forms that merge seamlessly with selected information from the database.

- G. Search capabilities must allow searching case by any field or combination of fields entered in the case as filters.
- H. Folder tracking and archiving to label, track, and archive paper case files throughout the life of the case including the ability to determine the last submission in a file before it was achieved.
- I. Calendaring and scheduling function for litigation and transaction teams that include but are not limited to discovery schedules, trial schedules, or any other deadline. Also provides a case specific calendar for every case and integrates both inbound and outbound with Outlook.
- J. Notifications, reminders, and alerts to users when certain conditions are met. Provides visual notification to distinguish the alert. Be able to set reminders for events that can be sent to Outlook emails/calendars.
- K. Integration with Outlook that allows for auto-saving and/or filing to a specific case or matter.
- L. Electronic case file/archive provides an archive to allow all documents, photos, audio and video files, and other digital evidence to be stored electronically as part of the case file.
- M. Storage capabilities for case-related discovery within cases.
- N. E-discovery should allow for case-related discovery packages to be assembled and documents to be redacted, and must facilitate transfer of e-discovery to relevant parties.
- O. Must allow other agencies and/or departments to request assistance from Law, and communicate about specific matters.
- P. Must allow other agencies and/or departments to provide materials such as reports, videos, photos, etc. for discovery purposes.
- Q. Document review/approval to provide an approval process. System should provide an outline/remote document review for proofreading and tracking reviewer details.
- R. Motion/brief bank that provides a repository to store legal motions and briefs indexed by category, case number, author name, date, description, etc.
- S. System should be able to be accessed from all major mobile phones, OS, tablets, laptops, etc. for Law users. An ability for other departments to access data and functions according to access for specific case is desirable. Must have the ability to silo information completely from other departments.
- T. The document management system must provide, at a minimum, the following capabilities:
 - a. The ability to file and maintain uploaded documents.
 - b. The ability to search documents by name, creator, client, file number, subject, etc.
 - c. Create templates and forms.

2. Hardware and Software Requirements

- A. Compatible with Windows – system needs to be Windows 10 compatible
- B. Security – system must provide multiple sealing designations, field level auditing, role based user accounts, and data encryption.
- C. Hosting – Saas/Cloud and on-prem/locally hosted options will be considered and the City welcomes both options being presented in the proposals.
- D. Patching and application updates – Respondent must supply and apply functional and application patches for the life of the contract. Respondent must supply and apply security patches for the life of the contract. Respondent must apply security patches to vulnerabilities with a CVSS score of 6.0 and greater within ten (10) business days.

- E. Conversion from existing systems – system and/or Respondent must convert and incorporate existing data from Infor.

3. Reports

- A. Case management system must provide, at a minimum, easy to use report capabilities and will include ad hoc and standard report writing tools. It should allow reports to be automatically run on a schedule and include the ability to format and email reports run automatically. No programming skills or other specialized knowledge should be needed to produce basic reports. Users must be able to create and save their own reports and are able to sort and filter on any column.

4. Project Manager/Work Plan

- A. The Respondent shall provide a project manager/team with the necessary expertise and resources to oversee and perform the tasks involved to ensure the successful and timely implementation of the system.
- B. At the beginning of the contract, the project manager/team must provide Law a detailed plan that sets forth the various project phases with definitive start and completion dates. The work plan shall include, but not be limited to:
 - a) Specifications of all software modifications;
 - b) Hardware/software installation;
 - c) Data conversion;
 - d) Delivery of documentation;
 - e) Training schedules;
 - f) System acceptance; and
 - g) On-site support, as required.
- C. The project manager shall submit an updated project work plan to Law at regular intervals, and as project events may require.
- D. Upon project commencement, the project manager/team must provide bi-weekly written status reports to Law's project manager. This report must document the project's status, identify tasks not on schedule, report problems, and specify how and when problems will be solved.

5. Data Conversion

- A. The successful Respondent shall be responsible for the accurate transfer and reformatting of all data, including archive and historical data, from existing files to the new system. The completed transfer of data must be approved by the City.

6. Training

- A. Respondent must provide training to current attorneys and staff, together with a training plan for new employees. The training plan should be designed and conducted to provide complete familiarization with applicable systems for Law users and technical personnel.

- B. Respondents must provide a detailed plan for training which must include:
 - a. Overview of proposed training plan.
 - b. The role and responsibility of the software vendor and Law staff in the design and implementation of the training plan (development of training materials and training to users).
 - c. Descriptions of classes/courses proposed in the training plan. Respondents should specify the unit of measure for training (units, classes, days, etc.) and define the hours associate with these units of measure. Respondents must provide specific detail regarding the training materials and course to be included in the cost of the proposal in both written and electronic formats.
 - d. A copy of all training material used during the selected Respondent's provided instruction will be provided and become property of the City.

7. Documentation

- A. The system must be fully documented prior to acceptance of the system by the City. The City shall maintain the right to make sufficient number of copies of all documentation for its own internal use. Documentation must include:
 - a) Management overview;
 - b) Detailed user instruction;
 - c) Technical components, programs, files, procedures, etc.; and
 - d) Sample copies of documentation as part of the RFP.

8. Source Code

- A. For all software furnished and installed by the Respondent pursuant to this RFP, and upon the installation and acceptance of any future revisions, upgrades, enhancements, corrections, changes or modifications to the software, Respondent shall provide a nationally recognized escrow agent ("Escrow Agent") with a copy of the current Source Code and Object Code, as well as all software, relevant commentary, explanations, and other documentation necessary to compile, run, program, alter, correct, adapt, change and modify the complete Source Code, including instructions to compile the Source Code ("Materials") and any modifications and upgrades. Respondent agrees that the Materials and all relevant documentation shall be held by a third party pursuant to an escrow agreement at the Contractor's expense, and shall be given to Law upon the occurrence of one of the following:
 - a. The Respondent becomes bankrupt, insolvent or makes an assignment for the benefits of creditors.
 - b. The Respondent violates any of the terms and conditions of the agreement, including without limitation termination of maintenance support of the "System," or any relevant statute or regulation, and the violation is not remedied within thirty (30) days of the party's receipt of written notice of the violation.
- B. The City agrees that the Source Code, Object Code and Materials shall be provided to the City pursuant to the section for the sole purpose of continued support of the "System" applicable to this RFP. In such case, the City shall have the right to support the "System" internally.

9. Warranty

- A. The Respondent must provide an application software warranty of at least twelve (12) months as a part of the software license agreement. The warranty must warrant that the system is free of major defects and operates in accordance with Respondent documentation and provides functions and performance as required by these specifications.

10. Help Desk Support

- A. The Respondent shall provide help desk operations with dedicated staffing. Respondent shall provide a toll free number for inquiries Monday through Friday during normal business hours Eastern Time. Email contact should also be available with response within one (1) hour during normal business hours Eastern Time. Requests outside of normal business hours Eastern Time (after hours and weekends) should be handled the next business day on a first come, first served basis.

11. File Back-Up/File Recovery

- A. The Respondent shall provide procedures for adequate backup and recovery of files related to the proposed system. The procedure must assure, to a reasonable degree that upon system failure, disk failure or other system component failure that system databases are restored to their pre-failure status and that data integrity is maintained. Recovery from failure must be provided such that operation may be continued immediately following replacement of the failing component.

12. Customer Service Escalation Plan

- A. Respondents must detail their customer service escalation plan in their proposal. Proposals without a conflict resolution plan will be considered incomplete.

- 13. A Software as a Service (SaaS) Agreement resulting from this RFP shall commence on or around July 1, 2025 for a term of five (5) year, with an option to renew for up to one (1) additional five (5) year renewal term upon agreement of the parties.

5. PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be received by the City no later than March 24, 2025. Proposal shall be submitted electronically by email to:

Patrick Beath
Corporation Counsel
City Hall, 30 Church Street
Rochester, New York 14614
patrick.beath@cityofrochester.gov

This RFP is designed to facilitate the evaluation and selection of a Consultant that is best able to achieve the City's objectives. The proposal shall contain a table of contents. All pages shall be numbered and major sections and all attachments shall be referenced in the table of contents. In order to enable the City to effectively review the information contained in the proposals, proposals shall reference the numbered and lettered sections of the RFP. The response to each section shall be clearly indicated and addressed or an explanation provided for why the Respondent is not submitting a proposal for a specific section or requirement of the RFP. If desired, the proposal may include an executive summary of no more than two pages.

Each proposal shall be signed by an individual authorized to enter into and execute contracts on the Respondent's behalf. Unless otherwise specified in its proposal, Respondent represents that it is capable of meeting or exceeding all requirements specified in this RFP.

Submission of a proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on such other available information that the City determines to be relevant. The evaluation of proposals may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Respondent selected by the City will be required to enter into a Software as a Service Agreement (SaaS) with the City (see Attachment A, the City's standard SaaS form). The establishment of a SaaS is contingent upon approval by City Council for all Agreements in excess of \$10,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated in the proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this SaaS. (Note: Attention is directed to the City's Living Wage requirements and MWBE and Workforce Utilization Goals)

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the responding Respondents or to conduct the Project described herein. The City may amend or withdraw the RFP at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a proposal or responding to the City's requests with respect to the proposal.

6. PROPOSAL CONTENT

The proposal should include the following information in the order specified:

- A. Project statement: A Project narrative that describes the Respondent's understanding of the City's needs and the unique value the Respondent will bring to the process.

- B. Description of Services: Methodology the Respondent will use to perform the services required in this RFP. The proposal should address, in detail, the tasks as described in the Scope of Services, identified by numbered or lettered sections.
- C. Respondent's Qualifications: Information about the Respondent and its qualifications for this Project. Include information about prior engagements similar to that being solicited herein by the City. Documented evidence of the Respondent's capacity to perform the work, including references, contact names, and phone numbers. Preference will be given to Respondent's who have prior contracts with municipal law departments that have a city wide population over 200,000.
- D. Project Budget: An itemized budget including staff hours and billing rates which addresses each of the tasks identified in the Scope of Services.
- E. Project personnel: The name and resume of the Respondent's lead person for the Project. Names, resumes, and roles of all staff who will be involved in the Project. Provide data on the diversity of Respondent's overall workforce, including total number of employees, and percentages of minorities and females employed.
- F. Subcontractors: Names, resumes, and roles of sub-contractors, associates, or any non-employees who will be involved in the Project.
- G. Rochester presence: Information about Respondent's presence in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Project.
- H. MWBE: Statement as to whether or not the Respondent is a bona fide MWBE firm, will use bona fide MWBE subcontractors and the percentage of the workforce utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Consultant's workforce and that of any subcontractors who will be utilized.

7. EVALUATION CRITERIA

The following is a summary of the proposal evaluation criteria. It is within the City's sole discretion to determine the value assigned to each of these criteria. It is within the Department's discretion to decide whether or not to include the numerical weightings for the below categories or whether to include additional criteria for evaluation. It may be beneficial to identify the criteria that are of greatest importance to your RFP with a weighting system, to ensure that Respondents will emphasize those criteria in their proposals.

Proposal: The Respondent's comprehension of the needs of the City as demonstrated by its description of its approach to the elements listed in the Scope of Services section of this RFP.

Experience: The Respondent's relevant experience in providing the same or similar services.

Cost: The total cost of the Respondent's proposal is important to the City, however, based on the evaluation of the other criteria, the City will not necessarily select the lowest bidder.

References: Evaluation of the Respondent's work for previous clients receiving similar services to those proposed in this RFP.

Commitment of key principals to the Project: Demonstration of availability of senior-level staff or associates to be assigned to this Project to ensure depth, accountability, and diversity of perspective.

MWBE and Workforce Goals: The City of Rochester desires to encourage minority and women owned (MWBE) businesses to participate in opportunities to enter into SaaS with the City and to encourage minorities and women in the workforce. Pursuant to Ordinance No. 2018-54, the City has a goal that 30% of the aggregate annual contract awards for professional service contracts over \$10,000 be awarded to minorities (M) (15%) and women (W) (15%). The City has also established minority workforce goals of 20% M and 6.9% W for professional services consulting contracts. For more information please see <http://www.cityofrochester.gov/mwbe>.

Respondents shall be awarded MWBE bonus weighting as follows:

1. The City will give preference to Consultants who are New York State certified MWBEs. Consultants who meet this requirement shall receive **an additional weighting of 10%**.
2. The City will give preference to Consultants who utilize state certified MWBE subcontractors with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. State-certified MWBEs from outside the Region may be counted if there are insufficient businesses in the Region to perform the specialized work or consulting services required. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the consultant shall receive **an additional weighting of 5%**. If MWBE subcontractors will perform more than 20% of the work of the contract, the Consultant shall receive **an additional weighting of 10%**.
3. Respondents shall provide sufficient documentation with their proposal to support the additional preference weighting as an MWBE Consultant or for use of MWBE subcontractors. If one or more MWBE subcontractors are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. Once approved, the Utilization Plan shall be incorporated into the SaaS.
 - a. If the total amount of a SaaS is increased by 5% or more at any time during the term of the SaaS, the Consultant shall submit a revised MWBE Utilization Plan

for approval by the MWBE Officer. The MWBE Officer may also issue a revised MWBE Utilization Plan for unforeseen changes in the availability of MWBE subcontractors during the term of the SaaS.

4. The City will give preference to Consultants who meet or exceed the City’s workforce goals, which are: 20% M and 6.9% W. Consultants who demonstrate that their and/or their subcontractors’ workforce on this Project meets or exceeds these goals shall receive an **additional weighting of 10%**. If selected, the Respondent shall submit a Workforce Staffing Plan on the City’s Form for review by the MWBE Officer. Once reviewed, the Workforce Staffing Plan shall be incorporated into the SaaS. The calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.
5. If selected, the Respondent shall provide MWBE utilization and subcontractor/supplier payment certification and/or workforce utilization reports on the City’s forms. These reports shall be submitted with each invoice or as otherwise requested by the MWBE Officer.
6. A failure to submit the required subcontractor/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the most recent MWBE Utilization Plan and/or Workforce Staffing Plan, for which additional weight was awarded by the end of the SaaS, such failure may result in disqualification from award of future contracts with the City.
7. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

| Category of Additional Evaluation Points | Additional Weight Awarded |
|---|----------------------------------|
| Respondent is New York State Certified MWBE | 10% |
| Utilize MWBE Subcontractors for 10-20% of work | 5% |
| Utilize MWBE Subcontractors for more than 20% of work | 10% |
| Meet or exceed workforce goals of 20% M and 6.9% W | 10% |

City of Rochester location preference: The City favors contracting with firms located in the City of Rochester and a preference will be given to Consultants located in the City, through an

additional weighting of 10%. Non-local firms may wish to consider partnerships or other collaborative arrangements with local firms as a strategy to address this criterion.

Other Criteria: Other criteria may be considered and evaluated by the City if it is determined to be in the best interest of the City and the success of the Project to do so.

The selection of a Consultant is within the City's sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. Although costs are an important consideration, the decision will be based on qualifications and compliance with the requirements of this RFP and not solely on cost. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City further reserves the right to waive or modify minor irregularities in the proposals and negotiate with Consultants to serve the City's best interest.

8. MISCELLANEOUS

The City reserves the right to amend or withdraw this RFP in the City's sole discretion, including any timeframes herein, upon notification of all Respondents as set forth above, and in such case, the City shall have no liability for any costs incurred by any Respondent.

The City may request additional information from any Respondent to assist the City in making its evaluation.

The Consultant shall not employ as a director, officer, employee, agent, or sub-proposer an elected or appointed official or any employee of the City or any member of his or her immediate family. The Consultant has acknowledged and completed a signed disclosure form to the City, attached hereto as **Attachment B**.

The proposal and all materials submitted with the proposal shall become property of the City and will be subject to NYS Freedom of Information Law. If any proprietary information is submitted with the proposal, it must be clearly identified and a request to keep such information confidential must be submitted.

Submission of a proposal shall constitute a binding offer by Respondent to provide the services at the prices described therein until such time as the parties enter into a SaaS.

Attachment A

SaaS Form

**AGREEMENT FOR SUBSCRIPTION BASED SOFTWARE SERVICES AND ASSOCIATED
IMPLEMENTATION SERVICES**

Project Name: Employee Recruitment and Civil Service Tracking

Project Code:

Provider Name:

Agreement #:

Authorizing Ordinance:

I N D E X

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| Exhibit C – SERVICE LEVEL AGREEMENT | Error! Bookmark not defined. |
| EXHIBIT D – WORKFORCE STAFFING PLAN / MWBE UTILIZATION PLAN | Error! Bookmark not defined. |
| EXHIBIT E – SOFTWARE ESCROW RIDER | Error! Bookmark not defined. |

AGREEMENT

THIS AGREEMENT, entered into on the _ day of __, 20_, by and between the CITY OF ROCHESTER, a municipal corporation having its principal office located at City Hall, 30 Church Street, Rochester, New York, 14614, hereinafter referred to as the "City," and _____, a _____ corporation having principal office at _____, hereinafter referred to as the "Provider."

WITNESSETH:

WHEREAS, the City desires to secure license to (named software) and use and license the Platform (as described herein) and of software professional services of the Provider to _____, defined herein as the Project; and

WHEREAS, the Provider covenants that it has the personnel, skills, and expertise required and wishes to undertake the Project.

NOW THEREFORE, the City and the Provider do mutually agree, in consideration of the covenants, terms and conditions contained herein, as follows:

PART 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions.

In this Agreement, unless the context otherwise requires, capitalized terms will have the meaning assigned to them herein, including the following:

A) "Affiliate" means any parent, subsidiary or other entity that is (directly or indirectly) controlled by, or controls, Provider.

"Account-holder" means an individual designated by the City to whom an account on the Platform is issued.

"Authorized Agent" means those individuals identified by the City and Provider in Part 9 of this Agreement.

"Authorized User" means is the City of Rochester, New York, including its employees, Authorized Agent, consultants, auditors, and any external Account-holders as contemplated by the parties.

"City" means the City of Rochester, New York.

"City Data" means information, databases, data compilations, reports, charts, graphs, diagrams, or other information created, generated or maintained by Provider or its subcontractors for the benefit of the City under this Agreement or made accessible by the City to Provider under this Agreement. City Data includes, but is not limited to: data created solely by the City's use of Provider's Cloud Services; and electronically stored information ("ESI") that is supplied,

or derived from data supplied, to Provider or its subcontractors by or on behalf of the City, and any copies of such ESI.

"City IT" means the City Department of Information Technology.

"Cloud Services" means the software-, platform-, infrastructure- or other "as a service" solution for which access is provided by Provider to the City under this Agreement, including any client software provided to the City by Provider for use with the Cloud Service.

"Cloud Terms" means any agreements between the Provider and the underlying cloud provider (e.g., Amazon Web Services (AWS), Azure, etc.) that govern the City's use of Provider's Cloud Service.

"Force Majeure" means circumstances beyond a party's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, pandemics, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays, or hosting service provider failures or delays.

"PII" means personal identifying information, including without limitation full name, address, phone number, Social Security number, driver's license number, bank account number, passport number, email address, and any related documents containing such.

"Platform" means the core Software As A Service (SaaS) physical and software environment owned and managed by the Provider that supports the services offered by the Provider.

"Provider" means the entity entering into this Agreement with the City.

"Privacy and Security Program" is defined in Section 16.2.

"Security Incident" means an act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise: (1) the security, confidentiality, availability, or integrity of City Data (including, without limitation, the unauthorized or illegal acquisition, access, or alteration of City Data by an unauthorized person); or (2) the physical, technical, administrative, or organizational safeguards put in place by Provider that relate to the protection of the security, confidentiality, availability, or integrity of City Data.

PART 2. - DESCRIPTION OF PROJECT

2.1 General Description

[Insert description of the "Project" and define.]

PART 3. - DESCRIPTION OF PROFESSIONAL SERVICES

3.1 General

The Provider shall provide the following services:

A)

The Provider is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. The Provider shall provide a list of its employees assigned to the project which provides the employee's name and title prior to the start of work. The Provider shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City, which will not be unnecessarily delayed, conditioned, or denied.

The Provider shall maintain an up-to-date, orderly, assembled file of project notes and records. Notes shall include correspondence, calculations, documentation, references, project plans, and other material necessary for the completion of the Project.

The Provider is responsible for the professional quality, technical accuracy, timely completion and appropriate coordination of all designs, drawings, specifications, testing, reports and other services furnished under this Agreement. The Provider bears all responsibility for any errors, omissions or other deficiencies in the Provider's designs, drawings, specifications, reports and other services and shall correct or revise any such errors, omissions or other deficiencies without additional compensation.

The Provider's obligations under this section are in addition to the Provider's other express or implied assurances under this Agreement or state law and in no way diminish any other rights that the City may have against the Provider for faulty materials, equipment, or work.

The Provider shall keep the City informed of the progress of the work so that the City may inspect the Provider's work as determined necessary by the City. In particular, the Provider shall provide the City with at least forty-eight (48) hours notice prior to performing work that would prevent proper inspection of previously completed work.

The Provider shall meet with the City at the City's request to discuss the assessment results and recommendations as may be deemed necessary by the City.

3.2 - Additional Services (if applicable)

PART 4 - SUBCONTRACTS AND THIRD PARTY PROVIDERS

A) All services to be performed under this Agreement shall be performed with the Provider's own employees, unless the City agrees that the Provider may subcontract such services. Copies of all proposed agreements between the Provider and subcontractors shall be submitted to the City along with a statement of the subcontractor's qualifications. Such Agreements shall be approved by the City in writing prior to initiation of work. All subcontracts under this Agreement are subject to all applicable provisions of this Agreement unless otherwise directed in writing by the City. The Provider is responsible for the completion of all services under this Agreement in an acceptable and timely manner, including any services performed by a subcontractor, supplier or other party with whom the Provider has a contract.

Provider must identify any third-party entities involved in the provision of the Cloud Service and provide the City with a copy of Provider's agreement with the third-party provider. The agreement must be approved in writing by the City. Any provision in the Cloud Terms to the contrary is deemed to conflict with this Agreement. If Provider proceeds with an unapproved third-party provider, it will be deemed liable to the City for any third-party claims to the same extent as the third-party provider would have been liable had it agreed to the terms set forth in this Agreement.

Any subcontractor or Affiliate of Provider that provides any software or services in connection with the Cloud Service is deemed to be a subcontractor whose subcontracts must be approved in writing by the City. Any provision in the Cloud Terms to the contrary is deemed to conflict with this Agreement.

PART 5 - CITY RESPONSIBILITIES

The City shall:

A) Provide as complete information as is reasonably possible as to its requirements for the Project to the Provider.

Assist the Provider by making available to the Provider any information pertinent to the Project, including previous reports and any other relevant data.

Examine all studies, reports, sketches, estimates, drawings, specifications, proposals and other documents presented to the City by the Provider for review and render decisions pertaining thereto within a reasonable period of time, so as not to delay the work of the Provider.

Designate a representative (Authorized Agent) to act as liaison between the City and the Provider. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the City policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.

Give written notice to the Provider where the City observes or otherwise becomes aware of any default in the Provider's performance hereunder or where the City does not concur with the design or other recommendations of the Provider.

Obtain or provide in a timely manner permission for the Provider to enter upon any sites, buildings, and facilities as deemed necessary by the Provider to perform the services required pursuant to this Agreement.

PART 6 - FEES

6.1 - General

A) In no event whatsoever shall the total fee payable to the Provider pursuant to this Agreement, including all costs and disbursements whatsoever, exceed \$.

The Provider shall have the right to bill the City for services performed and not already billed on a (monthly basis) (upon completion of all work required under this Agreement) (upon completion of).

The Provider shall submit an invoice and any other supporting documentation in the manner prescribed by the City at a minimum of once every ninety (90) days during the term of the agreement unless a different schedule is approved by the City.

The City is not responsible for an early termination fee.

Upon any termination of a Cloud Service, Provider shall within the following thirty (30) days promptly refund all unused prepaid fees.

Rates and fees may only be increased pursuant to a written amendment to this Agreement that has been signed by both parties. Overage and excess usage fees are not permitted in the absence of the City's prior written agreement, which will require City Council approval.

The City will not be liable for any unauthorized use, including fees and charges that may become due to Provider as a result of that use.

The City's payment of an invoice without objection or failure to raise an objection to an invoice will not constitute a waiver of any objections to that invoice.

Service Credits. Provider shall calculate and apply all service credits earned during a given billing period to the invoice for the following billing period, or if there is no future billing period to be invoiced (e.g., in the event of a prepayment), to a later purchase of the same or a different Cloud Service. SLA claims and service credits will not be deemed to be waived by the passage of time or by the City's failure to report an issue or request service credits. SLAs must be calculated no less frequently than on a monthly basis, and credits may not be capped at less than 100% of the fees for the provision of the applicable Cloud Service during the SLA period in which the credits are earned.

PART 7 - TERM

This Agreement shall commence (upon execution by the parties) (on DATE) and shall terminate (one year from such date) (on DATE).

PART 8 - REMOVAL OF PERSONNEL

All personnel assigned by the Provider shall be subject to the approval of the City and be required to cooperate with the City project personnel. In the event that the Provider's personnel fail to cooperate or perform their assigned tasks in a reasonable manner as determined by the City, the City may require the Provider to replace such personnel.

PART 9 - AUTHORIZED AGENT

The parties hereby designate the Authorized Agents listed below for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if dispatched by registered or certified mail, postage prepaid, or delivered personally to the Authorized Agents designated herein. The parties reserve the right to designate other or additional Authorized Agents upon written notice to the other.

The City hereby designates:

Corporation Counsel
City Hall
Room 400
30 Church Street
Rochester, New York 14614-1278

The Provider hereby designates:

[Name/Title]
[Address]
[Email]
[Telephone]

PART 10 - OWNERSHIP OF DOCUMENTS

All original notes, drawings, specifications, design diagrams, custom workflows, discovery documentation, custom code, sql tables and user defined fields prepared by the Provider under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual assessment or Milestone report will become the property of the City and shall be delivered to the City's Authorized Agent. The Provider may provide a complete reproducible set of drawings, specifications, survey maps and all other documents in lieu of the originals.

PART 11 - CONFIDENTIALITY

11.1 General

The Provider agrees that any and all data, analyses, materials or other information, oral or written, made available to the Provider with respect to this Agreement, and any and all data, analyses, materials, reports or other information, oral or written, prepared by the Provider with respect to this Agreement shall, except for information which has been or is publicly available, be treated as confidential, and shall not be utilized, released, published or disclosed by the Provider at any time for any purpose whatsoever other than to provide consultation or other services to the City.

Provider agrees to maintain the confidentiality of such City Data by using a reasonable and same degree of care that Provider uses to preserve the confidentiality of its own confidential information. Provider agrees that such City Data shall not be made available to any person or

entity without the prior written approval of the City. The obligation under this section to City Data confidentiality shall not apply where Provider is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("disclosure demand"), provided that Provider complies with the following: (1) Provider shall provide advance notice to the Authorized Agent, in writing or by email, that it received a disclosure demand for to disclose such reports, information or data, and (2) if requested by the City, Provider shall not disclose such City Data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such Data. The previous sentence shall not apply if Provider is prohibited by law from disclosing to the City the disclosure demand for such City Data.

11.2 Freedom of Information Law

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should Provider provide the City with any records it deems confidential and exempt from FOIL, Provider shall clearly mark such portions of those records as confidential and exempt from FOIL disclosure. Upon any request for disclosure of information so marked, the City will inform Provider of the request and give Provider ten (10) business days to submit a written statement of necessity for exempting the records from disclosure pursuant to New York Public Officers Law 89(5). As required by the Public Officers Law, the City will issue a determination as to disclosure within seven (7) business days. If the City determines that the records must be disclosed, Provider may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to Provider's appeal within ten (10) business days. If the City issues an adverse determination, Provider may appeal the decision within fifteen (15) days of service by commencing an Article 78 proceeding under New York's Civil Practice Law and Rules.

PART 12 - ORGANIZATIONAL CONFLICT OF INTEREST

The Provider warrants that to the best of the Provider's knowledge and belief, there are not relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Provider has disclosed all such relevant information. The Provider agrees that if an actual or potential organizational conflict of interest is discovered, the Provider will make a full disclosure as soon as possible in writing to the City. This disclosure shall include a description of actions which the Provider has taken or proposed to take, after consultation with the City, to avoid, mitigate, or neutralize the actual or potential conflict. The City may terminate this Agreement in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Provider was aware of a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose it, or misrepresented relevant information to the City, the City may terminate the Agreement, debar the Provider from contracting with the City, or pursue such other remedies as may be permitted by law or this Agreement. In such event, termination of this Agreement shall be deemed a termination for default. The Provider further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this Part.

PART 13 – INDEMNIFICATION AND LIABILITY

13.1 Provider's Indemnification

The Provider hereby agrees to defend, indemnify and save harmless the City and its employees, officers, and agents (collectively, "Indemnitees") against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses (including witness fees, expert fees, investigation fees, travel expenses, bonds, the cost of establishing the right to indemnification under this section, court costs and reasonable attorney's fees) of whatever kind or nature, which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the Indemnitees, as a result of the negligent act or omission, breach or fault of the Provider, its employees, agents or subcontractors. The Provider shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the Indemnitees from loss or damage resulting therefrom. If a claim or action is made or brought against the City and for which the Provider may be responsible hereunder in whole or in part, then the Provider shall be notified and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section. Insofar as the facts or the law relating to any claim would preclude the Indemnitees from being completely indemnified by Provider, the Indemnitees will be partially indemnified by Provider to the fullest extent permitted by law.

13.2 City's Indemnification

No Indemnification by the City. Any provision in the Cloud Terms or Agreement requiring the City to provide indemnification is hereby deemed to be void and unenforceable.

13.3 Limitation of Liability

EXCEPT WITH RESPECT TO INDEMNIFICATION OR A VIOLATION OF LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, ANY OF THE OTHER'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, MEMBERS, MANAGERS, PARTNERS, REPRESENTATIVES, ASSIGNS CONTRACTORS, SUBCONTRACTORS, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, RELIANCE, TREBLE, OR EXEMPLARY/PUNITIVE DAMAGES, OR LOST PROFITS, LOST REVENUE, LOSS OF FINANCING, OR LOSS OF TECHNOLOGY, WHETHER ARISING UNDER ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, FOR ANY CLAIM OR DEMAND OF ANY NATURE OR KIND, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

13.4 Warranty

Provider represents and warrants that the Platform and Cloud Service will function in accordance with the agreed upon service levels. Provider represents and warrants that it has the rights necessary to provide the Platform to the City in accordance with the Agreement.

13.5 No Individual Liability

Nothing contained in the Agreement shall be construed as creating any personal liability on the part of any officer or agent of the City.

PART 14 - INSURANCE

14.1 General Liability Insurance

The Provider shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Project. With minimum limits as follows:

- Bodily Injury & Property Damage Limit: \$2,000,000 each occurrence
- Products/Completed Operations Limit: \$4,000,000 aggregate
- Personal Injury & Advertising Injury Limit: \$2,000,000 each person/organization
- General Aggregate: \$4,000,000 applicable on a per project basis

The above limits can be achieved by combination of a follow form Umbrella/Excess policy.

14.2 Data Breach and Privacy Cyber Liability Insurance

Provider shall maintain at all times during the provision of Cloud Services, and as otherwise required herein, data breach and privacy cyber liability insurance with limits of no less than \$5,000,000 per claim and \$5,000,000 in the aggregate. This policy must include coverage for: (i) failure to protect confidential information, including personally identifiable information, (ii) failure of the security of Provider's computer systems, (iii) failure of the security of the City's systems or City Data due to the actions or omissions of the Provider. This policy must include coverage for:

Data breach expenses, including forensic services, the cost of complying with privacy laws and regulations, legal representation, notification costs, public relations and crisis management costs, credit monitoring, fraud consultation, credit freezing, fraud alert, and identity restoration services;

Costs arising from cyber extortion threats, including the payment of ransom demands;

The alteration, loss, corruption of data, including costs to recover, correct, reconstruct, and reload lost, stolen, or corrupted data;

The cost of replacing, repairing, or restoring computer systems, including hardware (including laptops and mobile devices), software, networking equipment, and storage;

Costs arising from an attack on a network or computer system, including denial of service

attacks, malware, and virus infections;

dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons;

media liability; and cyber theft of customer's property, including but not limited to money and securities.

14.3 Technology Errors and Omissions Insurance.

Provider shall maintain at all times during the provision of the Platform, and as otherwise required herein, technology errors and omissions insurance covering Provider in the amount of at least \$5,000,000 per occurrence and \$5,000,000 in the aggregate for damages arising from computer related services, including, but not limited to, one or any combination of the following: (a) consulting, (b) data processing, (c) programming, (d) system integration, (e) hardware development, (f) software development, (g) installation, (h) distribution or maintenance, (i) systems analysis or design, (j) training, (k) staffing or other support services, (l) cloud computing services, and (m) any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. This policy must include coverage for third-party fidelity, including cyber theft.

14.4 Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Provider shall require all the Provider's subcontractors to keep insured, during the life of this Agreement, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event the Provider hires its own employees to do any work called for by this Agreement, then the Provider agrees to so insure its own employees. The Provider shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Provider shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting a completed New York State Workers' Compensation Board's form WC/DB-100.

14.5 Insurance Requirements

A) A reputable insurance company, authorized to do business in the State of New York, shall issue said insurance. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Provider shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Provider shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

- B) All required insurance policies must be maintained with companies that may lawfully issue the policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from Corporation Counsel.

All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

The City's limits of coverage for all types of insurance required under this Article shall be the greater of (a) the minimum limits required in this Agreement, or (b) the limits provided to Provider as named insured under all primary, excess, and umbrella policies of that type of coverage.

Policies of insurance provided pursuant to this Agreement must be primary and non-contributing to any insurance or self-insurance maintained by the City.

If Provider receives notice from an insurance company or other person that any insurance policy required under this Agreement will expire or be cancelled or terminated for any reason, Provider shall immediately forward a copy of such notice to both the Chief Technical Officer, City of Rochester Information Technology, 185 Exchange Blvd., Rochester, NY 14614 and the City Authorized Agent as identified in this Agreement.

Insurance coverage in the minimum amounts required in this Agreement will not relieve Provider or its subcontractors of any liability, nor will it preclude the City from exercising any rights or taking such other actions as are available to it.

Provider waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Provider or its subcontractors in the performance of Cloud Services

All claims-made policies must have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, Provider shall purchase extended reporting period coverage effective on cancellation or termination of the claims-made insurance unless a new policy is secured with the same retroactive date as the expired policy.

PART 15 - EMPLOYMENT PRACTICES

15.1 Equal Employment Opportunity and MWBE and Workforce Utilization Goals

- A) General Policy. The City reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of handicap status in admission, or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal Opportunity laws

and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

Compliance. The Provider shall comply with all of the following provisions of this Equal Opportunity Requirement:

- i) The Provider agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Provider agrees that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Provider, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability or marital status discriminate against any person who is qualified and available to perform the work to which the employment relates. The Provider agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship.

The Provider agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.

If the Provider is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Provider shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Provider can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

The Provider shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

MWBE and Workforce Utilization Goals. The City of Rochester has established a policy to promote the growth and development of Minority and Women Business Enterprises (MWBE) and to improve employment opportunities for minorities and women and has adopted MWBE goals and minority workforce participation goals that apply to public works and professional services consulting agreements with a maximum compensation exceeding \$10,000 pursuant to Ordinance No. 2018-54. Ordinance No. 2018-54 established the goal that MWBE's receive 30% of the total annual contract awards with aggregate minority and women award goals of 15% each. Ordinance No. 2018-54 further established annual aggregate workforce goals of 20% Minority and 6.9% Women. The MWBE Officer has determined because of the nature of the services of this Agreement that only Workforce Goals apply. Provider shall submit a workforce staffing plan in the form of Exhibit D, which, when reviewed by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit D, detailing the percentage of the workforce utilized to perform the work of this agreement who will be either minority or women, including both Provider's workforce and that of any subcontractors who will be utilized. Provider shall submit workforce utilization reports, in the form attached as Exhibit D, with each invoice or as otherwise requested by the MWBE Officer. Provider understands and accepts that the calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports. During the term of the Agreement, Provider shall notify the City if a change occurs that will result in a significant (5% or more) increase or decrease in the workforce staffing plan, incorporated as Exhibit D of this Agreement. A revised workforce staffing plan must be approved by the MWBE Officer. Once signed by Provider and the MWBE Officer, such revised plan(s) shall be incorporated into the Agreement as an updated Exhibit D. Provider's failure to submit the workforce utilization reports shall constitute a default in the performance of this Agreement. Failure to meet the goals stated in the most recent workforce staffing plan incorporated into the Agreement may result in disqualification from award of future contracts with the City.

15.2 Title VI of the Civil Rights Act of 1964

The City of Rochester hereby gives public notice that it is Municipality's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Municipality receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with Municipality. Any such complaint shall be in writing and filed with the City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at www.cityofrochester.gov, or by calling (585) 428-6185.

15.3 The MacBride Principles

The Provider agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride principles. A copy of the MacBride principles is on file in the Office of the Director of Finance.

15.4 Compliance with Labor Laws

The Provider specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction project. The foregoing requirements do not generally apply to professional staff, draftsmen, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. The Provider shall, however, comply with all state, federal and local non-discrimination and equal employment opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that the Provider has unlawfully discriminated because of the race, color, creed, national origin, sex or age of any applicant for employment or any employees.

15.5 Living Wage Requirements

A) Applicability of Living Wage Requirements. This section shall apply and the Provider shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance," in the event that payments by the City to the Provider under this Agreement shall exceed fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to more than fifty thousand dollars (\$50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

Compliance. The Provider shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at www.cityofrochester.gov. Provider shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

Exemption. This section shall not apply to any of Provider's employees who are compensated in accordance with the terms of a collective bargaining agreement.

PART 16 – SECURITY AND PRIVACY

16.1 Data Management and Security

- A) Safeguards to Protect City Data. Provider shall implement and maintain appropriate physical, technical, administrative, and organizational safeguards in accordance with industry best practices and applicable law to protect the security, confidentiality, availability, and integrity of City Data, including, but not limited to, the safeguards described in this Agreement.

Backup and Recovery of City Data. As a part of the Cloud Services provided under this Agreement, Provider is responsible for creating, maintaining, and testing backup copies of City Data. Provider is responsible for an orderly and timely recovery of the Cloud Services and City Data in the event that the Cloud Services are interrupted. Except as otherwise provided in this Agreement, the recovery time objective ("RTO") for Cloud Services is six (6) hours and the recovery point objective ("RPO") for City Data is two (2) hours. For the purpose of calculating the RTO, recovery time is equal to the elapsed period of time between the commencement of an interruption and the time at which the Cloud Service is fully restored and available for use by the City. RPO means the period of time during which changes made to data will not be included in a replication or other backup copy. Provider shall replicate data to a disaster recovery site that meets the requirements in this Agreement. Provider shall maintain no less than thirty (30) days of backups. Any backups of City Data will not be considered in calculating storage used by the City.

Disaster Recovery Sites. Provider shall have a minimum of one disaster recovery site at a distance from the primary site that is sufficient to protect against all hazards and consistent with industry best practices for business continuity. City Data must be replicated from the primary data center to the disaster recovery site in a time and manner sufficient to meet the RPO, and the Cloud Service must be configured to fail over from the primary data center to the disaster recovery site within the RTO. The disaster recovery site must be capable of supporting the Cloud Service at full load. The City will not incur any costs in relation to additional recovery site(s).

Disaster Recovery Plans. Provider shall implement, maintain, and test disaster recovery plans to minimize downtime resulting from all hazards, including system failure. Provider represents that these disaster recovery plans are documented, tested no less frequently than once every twelve (12) months, and updated as required. The City has a right to review Provider's disaster recovery plans, and Provider must, upon the City's request, provide the City with a copy of such plans.

Data Availability, Storage, and Retention. Provider shall comply with the following:

- i) Provider shall ensure that all City Data is available to the City at all times during the term of the Cloud Services and for a period of ninety (90) days after the term ends, including during any suspension of Cloud Services.

- ii) All City Data uploaded by the City and stored by Provider shall be available to the City to copy back to the City's storage without alteration or loss and at no additional charge.
- iii) Provider may not use, access, or perform any analytical analyses of any kind on data derived from the City's usage of the Cloud Service, whether anonymized or aggregated or both, except as agreed to in writing by the City in its discretion, or as required for the Provider to provide the Cloud Service.
- iv) City Data shall not be altered, moved, or deleted without the City's consent;
- v) If legal mandates for data retention apply specifically to City Data, Provider shall comply with all such mandates communicated to the Provider in writing; and
- vi) Provider agrees that City Data will remain in the United States.

Forensic and Investigative Response. Provider must document and maintain appropriate chain of custody throughout the duration of this Agreement for the purposes of potential forensic or legal investigation. Provider shall not remove metadata, except as directed by City.

Access to City Data. Provider shall implement identity and role based access control policies and procedures in accordance with applicable law and industry best practices, and as approved by the City. Upon the request of the City, Provider shall support federated identity and access management.

Occurrences Affecting City Data. Provider shall implement, maintain, test and update an incident response plan in accordance with applicable law and industry best practices. In the event of any Security Incident, Provider shall:

- i) notify the City as soon as practicable, but in no event later than twenty-four (24) hours after discovery of the Security Event, informing the City of the nature of the Security Incident, the harmful effects of which Provider is aware, and all actions Provider has taken and plans to take. For purposes of this section, a Security Incident is deemed to be discovered as of the first day on which it is known by Provider, its employees, subcontractors or other agents, or, by exercising reasonable diligence, would have been known by Provider, its employees, subcontractors or other agents;

provide the City with physical access to the affected locations and operations;

provide the City with access to Provider employees, subcontractors and other individuals with knowledge of the Security Incident;

cooperate with the City in investigating the occurrence, including by making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the City;

immediately remedying the Security Incident at Provider's expense in accordance with

applicable privacy rights, laws, regulations, policies, standards, and industry best practices;

allow the City to participate in the root cause analysis, or Provider shall provide to the City a detailed written root cause analysis for any breach or compromise;

notify the affected individuals as soon as practicable, but no later than required to comply with applicable New York State law, of any release of PII at the City's request and pursuant to the City's express instructions as to form, content, scope, recipients, and timing;

in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law, or, in the absence of any legally required period for monitoring services, for no less than twelve (12) months following the date of notification to such individuals;

be responsible for recovering and/or recreating lost City Data in the manner and on the schedule approved by the City without charge to the City;

bear the responsibility and all related costs for any Security Incident to the extent that the City (or its employees, subcontractors or affiliates) is not at fault, including the cost of any associated remedial actions or mitigation steps, credit monitoring, notification, regulatory investigations, fines, penalties, enforcement actions and settlements;

within five (5) days after its provision of notice to the City under this section, provide the City with a copy of its written incident response plan, and within the following five (5) days, provide the City with documentation that the incident response plan has been implemented; and

provide the City with a detailed corrective action plan describing the measures Provider will undertake to prevent future occurrences as expeditiously as possible under the circumstances.

Attempted Breaches. At the City's request, Provider must notify the City of the occurrence of any attempted breaches of the security, confidentiality, availability, or integrity of City Data within twenty-four (24) hours after discovery of the occurrence of an attempted breach.

Notice in Event of Provider Receipt of Warrant Subpoena or other Governmental Request. If Provider is served with a warrant, subpoena or any other order or request from a court or government body or any other person for any City Data, Provider shall, as soon as reasonably practical and not in violation of law, deliver a copy of such warrant, subpoena, order, or request to the City.

Data Commingling. Provider shall not commingle City Data with non-City Data that is uploaded by Provider, its customers or other third parties and stored by Provider.

16.2 Data Privacy and Information Security Program

A) Provider Privacy and Security Program. Without limiting Provider's obligation of confidentiality, as further described in this Agreement, Provider shall be responsible for establishing and maintaining a data privacy and information security program that includes reasonable and appropriate physical, technical, administrative, and organizational safeguards, to: (i) ensure the security, confidentiality, availability, and integrity of City Data; (ii) protect against any anticipated threats or hazards to the security, confidentiality, availability, or integrity of City Data; (iii) protect against unauthorized or illegal disclosure, access to, or use of City Data; (iv) ensure the proper disposal of City Data, if requested by the City or required by applicable law; and (v) ensure that all employees, agents, and subcontractors of Provider comply with all of the foregoing ("Privacy and Security Program"). In no case shall the safeguards of Provider's Privacy and Security Program be less stringent than the safeguards used by the City, or such other safeguards as shall be approved by the City in writing.

Security Controls. Provider's privacy and security controls must include, but not be limited to, physical, administrative, software, and network security measures, employee screening, employee training and supervision, and appropriate agreements with employees and subcontractors.

Vulnerabilities. Provider's software applications and any third party software applications embedded in the Provider's software applications must be free from vulnerabilities and defects. Provider must provide vulnerability scanning services for critical systems or systems hosting sensitive data. Provider must provide attestation by an objective third party, stating that the application has been tested for known security vulnerabilities, including, without limitation, the "OWASP Top-10" as published by the Open Web Application Security Project (see www.owasp.org for current list of the top 10).

Authorization and Access. Provider's access controls must enforce the following information technology security best practices with respect to its services:

- i) Least Privilege. Provider shall authorize access only to the minimum amount of resources required for a function;

Separation of Duties. Provider shall divide functions among its staff members to reduce the risk of one person committing fraud undetected; and

Role-Based Security. Provider shall restrict access to its services to only authorized users. Provider shall base access control on the role a user plays in an organization.

Change in Service. Provider shall notify the City of any enhancement, upgrade, or other change in the Cloud Service that may impact the security, availability, or performance of the Cloud Services.

16.3 Vendor Induced Inhibiting Code

Provider shall not include any vendor induced inhibiting code ("VIIC") or any other inhibitor in the Cloud Services or on reports and data submitted and provided to the City under this Agreement. VIIC means any deliberately included application or system code that will degrade performance, result in inaccurate data, deny accessibility, or adversely affect, in any way, programs or data or use of the Cloud Services.

16.4 Encryption

Provider shall encrypt all City Data, including backups, while at rest and in transmission from end to end using encryption standards and methods that are approved and recommended by NIST. The City shall have ownership of the encryption keys unless Provider demonstrates to the satisfaction of the City that City ownership is not architecturally feasible. The use of proprietary encryption algorithms is not allowed for any purpose, unless reviewed by qualified experts outside of Provider and approved in writing by the City. Proven algorithms must be used as the basis for encryption technologies. At a minimum, the preferred hash algorithm is 160bit SHA-1. 128bit MD5 is an acceptable alternative. SSL/TLS implementations should use either 3-DES or AES for the cipher component and 128bit MD5 or 160bit SHA-1 for the digest cipher.

16.5 City IT Security Review of Provider's Cloud Services

This Agreement may be subject to a security review by City IT of Provider's Cloud Services. If such a security review has been completed and City IT's written disposition requires Provider to comply with City IT prescribed security measures ("City IT Security Measures"), then, in addition to complying with this Agreement, Provider shall comply with the CITY IT Security Measures. Any written disposition of a security review by City IT will not be deemed to constitute an endorsement of the Cloud Services or a certification that the Cloud Services meet the City IT Security Measures or the requirements under this Agreement. Provider remains fully responsible for ensuring compliance with the City IT Security Measures and this Agreement. At all times during the term of the Cloud Services, Provider agrees to cooperate with CITY IT to ensure that Provider is in compliance with all CITY IT Security Measures and the provisions of this Agreement.

PART 17 - DOCUMENTS

17.1 Patents and Copyrights

The Provider agrees that, in the event it, or any of its employees' develop any material for which a copyright can be obtained which material was developed as a result of or in connection with the work required pursuant to this Agreement, the City shall own the copyright to any copyrightable material and may, in its discretion, grant a royalty-free, non-exclusive license to use, reproduce and distribute such copyrightable material. The Provider further agrees that in the event it, or any of its employees, develops any process, machinery or product for which a patent would be obtainable, the Provider shall provide the necessary information to the City, so that the City can apply for such patent at its own expense. Such patent shall become the property of the

City; provided, however, that the City may, in its discretion, may grant to Provider a royalty-free, non-exclusive license to produce or reproduce such patented product. The benefits of either a patent or a copyright shall also inure to any public agency which finances, in whole or in part, this project and such agency shall receive a royalty-free, non-exclusive license to use, reproduce, manufacture and distribute the product or mater which has been patented or copyrighted.

17.2 Audit

- A) Audit by Provider. No less than annually, Provider shall conduct a comprehensive audit of its Privacy and Security Program and provide such audit findings to the City. Provider shall engage a third-party internationally recognized auditor, at Provider's own cost, to perform periodic audits, scans, and tests as follows at least once per year and after any Security Incident that occurs during the term:
- i) a SSAE 16/SOC-1, Type II audit and a SOC-2, Type II audit of Provider's controls and practices relevant to security, availability, integrity, confidentiality and privacy of City Data;
 - ii) a network-level vulnerability assessment of all Provider systems used to deliver Cloud Services; and
 - iii) a formal penetration test of all systems used to deliver Cloud Services.

Findings. Provider shall provide the City with a copy of all reports generated for each audit, scan, and test within ten (10) days after its completion. Each report must: (i) indicate whether any material vulnerabilities, weaknesses, gaps, deficiencies, or breaches were discovered; and (ii) if so, describe the nature of each vulnerability, weakness, gap, deficiency, or breach. Provider shall, at its own cost and expense, promptly remediate each vulnerability, weakness, gap, deficiency, or breach that is identified in a report and provide the City with documentation of the remedial efforts within ten (10) days after their completion.

Provider shall: (i) keep its Payment Card Industry/Data Security Standard (“PCI/DSS”) certification in good standing; and (ii) have PCI/DSS audits performed annually. The City may access, anytime and from time to time, a copy of the PCI/DSS certificate of compliance, which will be maintained on Provider’s website at all times, to verify Provider’s PCI compliance.

Right of Audit by City. Without limiting any other audit rights of the City, the City shall have the right to review and audit Provider's Privacy and Security Program prior to the commencement of this Agreement and from time to time during the term of this Agreement. The review and audit may be conducted remotely or onsite by the City at the City's expense. The City shall conduct on-site audits in a manner so as not to unreasonably interfere with Provider's business operations. In lieu of an on-site audit, upon request by the City, Provider shall complete, within forty-five (45) calendar days of receipt, an audit questionnaire provided by the City regarding Provider's Privacy and Security Program. Provider shall not be entitled to compensation from the City for the time it spends cooperating with any of the

audits, scans, or tests provided for in this section, or in completing any audit questionnaire(s).

Performance Testing. Performance testing is required for all public-facing applications. Provider must demonstrate the ability to conduct performance testing and establish terms for testing and cost.

17.3 Use of the Platform

A) Provider Responsibilities. Provider will provide the Platform in accordance with the service levels set out in Service Level Agreement - Exhibit C. Provider will provide to the City, at no additional charge, the support for the Platform described in Exhibit C. Provider will comply with all Applicable Laws in the performance of this Agreement. The Provider agrees that ownership of all City data, metadata, and relationships of the data is retained by the City. The Provider may not make City data accessible to Provider employees or any third parties, except where directed by the City, or expressly approved for stability of the Platform.

Training. Provider will provide training to City's staff during the implementation period as provided in the Statement of Work - Exhibit B. This training may be in the form of in-person/on-site training or remote/online training. City's staff will also have access to all on-line training materials made available by Provider to its s including live and pre-recorded webinars. City may purchase additional training at Provider's posted standard hourly rate for professional services. For additional training purchased by City, City will reimburse Provider for all reasonable travel and other out-of-pocket expenses incurred by Provider's employees and subcontractors in providing on-site training. All such expenses for which Provider seeks reimbursement will be supported by documentation in a form reasonably acceptable to City.

City Responsibilities. City will (i) be responsible for Account-holders' compliance with all of the terms and conditions of this Agreement; (ii) be solely responsible for the accuracy, quality, integrity and legality of City Data, including City Content, and of the means by which City Data is acquired and used, including compliance with all personal information privacy laws and regulations and ensuring that no third party Intellectual Property Rights are infringed; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Platform, and notify Provider promptly of any such unauthorized access or use; and (iv) use the Platform only for Permitted Purposes and in accordance with the documentation therefor and all Applicable Laws.

Prohibited Conduct. The City recognizes the intellectual property rights of the Platform, and the Provider recognizes that all data, metadata and relationships of the data remain in the ownership of the City. With that understanding, the City will not knowingly or willfully:

- i) make the Platform available to anyone, or permit anyone to access the Platform, other than Account-holders;

license, sublicense, sell, resell, publish, republish, transfer, assign, distribute, rent, lease or time-share the rights granted to City under this Agreement, or copy or otherwise commercially exploit the Platform or its components in any way except in accordance

with the rights granted hereunder;

use the Platform in any manner or for any purpose that (a) violates this Agreement; (b) that contravenes, facilitates the violation of, or violates any Applicable Laws; (c) extracts, gathers, collects, or stores personal information about individuals except in compliance with all applicable personal information privacy laws or that involves data mining, robots or similar data gathering or extraction methods on individual's personal information without their express consent; or (d) interferes with or disrupts the integrity or performance of the Platform, Provider's systems or networks or third-party data of Content contained therein;

attempt to gain unauthorized access to the Platform or its related systems or networks;

post, upload, reproduce, distribute or otherwise transmit on the Platform (a) pyramid schemes; (b) any material that contains a virus, cancelbot, Trojan horse, worm or other harmful, disruptive or surreptitious component; (c) defamatory, infringing, indecent or unlawful software, materials or information; or (d) inappropriate, profane, or obscene software, materials or information without suitable or lawfully-required access controls;

alter, modify, reverse engineer, decompile, or disassemble, translate, extract data structures from or otherwise attempt to extract the source code from the Platform or any part thereof;

create derivative works based on the Platform or works containing a substantial part of the Platform;

disable or circumvent any access control or related process or procedure established with respect to the Platform;

remove any copyright or other proprietary or Intellectual Property Rights notices or labels on or in the Platform or any part, copy or report generated therefrom or thereof;

use the Platform to scan or probe another computer system, obstruct or bypass computer identification procedures or engage in unauthorized computer or network trespass without the express permission of the owners of such computer systems;

access the Platform in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Platform;

forge headers or otherwise manipulate any protocols or identifiers used in any system or protocol in such a manner to disguise the origin of any Content transmitted using the Platform;

impersonate or falsely represent an association with any person, including a Provider representative, without the prior express, written permission of such person; or

permit any of the foregoing to be done by any person, including City's employees,

contractors, agents, or representatives, including Account-holders.

For the avoidance of doubt, the City will not be responsible for any acts or omissions by the Account-holders or other members of the public for use of the Cloud Services made available through the Platform.

17.4 Data Ownership

A) The City retains sole ownership and intellectual property rights in and to all City Data. Provider shall not use the City Data for any purpose other than as required to provide the Cloud Services to the City.

The City hereby retains all right, title, and interest in and to any suggestion, enhancement request, recommendation, correction or other feedback provided to Provider relating to Provider's Cloud Services, except that Provider may use such information in connection with its provision of Cloud Services to the City.

Except as expressly provided in this Agreement, no ownership right or license to use, sell, exploit, copy or further develop City Data, any confidential information or intellectual property of the City is conveyed to Provider.

17.5 Separation Assistance

A) In the event of impending or actual separation (due to impending or actual expiration or earlier termination of this Agreement whenever that may occur) and for up to ninety (90) days following such expiration or termination, the City may request in writing that Provider do or permit the City to do any of the following, or any combination of the following:

- i) Export and/or copy City Data. If the City requests an export of City Data, such exported data shall be in a format approved by the City in writing.

Destroy any City Data. Any written request by the City directing Provider to destroy City Data shall specify what data the City is requesting to be destroyed. Provider shall not destroy any City Data in the absence of a specific written request from the City. If Provider destroys any City Data, it shall verify such destruction in writing.

Provider must provide separation assistance to the City to perform or support the exporting, copying, and/or destruction of City Data in accordance with the City's written request.

Transition Assistance will be provided at no cost to the City in the event of a termination by the City due to a breach by Provider of this Agreement or the Cloud Terms.

PART 18 - TERMINATION

18.1 Termination by the City

A) Termination for Convenience. This Agreement may be terminated by the City in accordance

with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Provider. However, no such termination shall relieve the Provider of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.

- B) Termination for Default. The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or, from time to time, in part, whenever the Provider shall default in performance of this Agreement in accordance with its terms (including in the term "default" any failure by the Provider to make progress in the prosecution of the work hereunder which endangers such performance) and shall fail to cure diligently such default within a period of ten (10) days or (or such longer period as the City may allow) after delivery by the City of a notice specifying the default.
- C) Termination for Security Incident. In the event of a Security Incident that is caused by Provider's failure to comply with this Agreement, the City may terminate the Cloud Service for cause on no less than fifteen (15) days' prior written notice. To be valid, notice of termination must be given within one (1) year after notification of the Security Incident was given to the City. Immediately upon Provider's receipt of a valid termination notice under this paragraph, all fees for services provided after the date of the Security Incident will be deemed to be waived by Provider, and Provider shall within the following thirty (30) days refund any waived fees that have been paid. This provision is in addition to any rights that the City may have to recover damages under this Agreement, the Cloud Terms, or pursuant to applicable law.
- D) Termination for Non-Appropriation or Non-Availability of Funds. This Agreement is subject to the appropriate provisions of the Rochester City Code. This Agreement will terminate, after thirty (30) days advanced notice, without additional compensation for work not performed (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) at any time within a fiscal year in the event that funds are appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. If this Agreement is terminated for non-appropriation, the City will be liable for payment in accordance with the terms and conditions of this Agreement for services rendered and expenses incurred, and deliverables, including software and other products delivered prior to the effective date of termination, and Provider shall be released from any such obligation to provide further Services pursuant to this Agreement to the extent affected by such termination.

18.2 Termination by Provider

In the event there is a default by the City with respect to any provisions of this Agreement, including the payment of fees, Provider shall give the City notice of such default. After receipt of such written notice, City shall have thirty (30) days in which to cure, provided the City shall have such period extended as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the City commences the

cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Provider may not maintain any action or effect any remedies for default against the City unless and until the City has failed to cure the same within the time periods provided in this section.

18.3 Termination General

A) If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Provider shall be liable to the City for any excess cost occasioned thereby. The Provider, upon such termination, shall transfer title, and in the manner directed by the City, shall deliver to the City the completed or partially completed, plans, drawings information, other property and records of work being performed, which, if this Agreement had been completed, would be required to be furnished to the City.

After receipt of written notice of termination, the Provider shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than ninety (90) days from the effective date of termination. In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay the Provider the amount determined as the total of the following:

i) The cost of all work performed prior to the effective date of termination.

The cost of settling and paying claims arising out of and as a direct result of the termination;

A sum as profit on subdivision (i) above, determined to be fair and reasonable, provided however, that if the Provider would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.

If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Provider was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."

PART 19 - GENERAL

19.1 Prohibition against Assignment

The Provider agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to execute such contract to any other person or corporation without the previous consent in writing of the City.

19.2 Compliance with All Laws

The Provider agrees that during the performance of the work required pursuant to this Agreement, the Provider, and all employees working under its direction, shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way their actions during their said performance of the work required by this Agreement. Furthermore, each and every provision of law, and contractual clause required by law to be inserted in this Agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

19.3 Successors

The City and the Provider each bind their successors, executors, administrators and assigns in respect of all covenants of this Agreement.

19.4 Interest of City and Provider in Contract

The City and the Provider agree that no member, officer, or employee of the City or of the Provider or assignees agents shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.

19.5 Taxes

In the event that services performed by the Provider for the City are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) the Provider shall receive from the City the material necessary to obtain a tax exempt certificate upon written request. The Provider shall pay all taxes, applicable to the work and materials supplied under this Agreement, it being understood that in no case shall any such tax be borne by the City, except as provided above.

19.6 Obligations Limited to Funds Available

The parties specifically agree that the Provider's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Provider, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to

perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

19.7 No Supplementary Agreements or Terms; No Unilateral Changes

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, Agreements, and conditions, whether written or oral. All click-through, click-wrap, or shrink-wrap agreements or other end user terms and conditions that are embedded in or provided with any of Provider's Cloud Services or presented to users in the course of the City's use of the Cloud Services are not applicable to the City, even if use of Provider's Cloud Services require an affirmative acceptance of those terms. The terms and conditions of this Agreement are in static form and may not be changed unilaterally. No online terms and conditions that are incorporated by reference in any related documents, including the Cloud Terms, or set forth in hyperlinked websites are binding on the City. To be valid, any amendment this Agreement must be in writing, approved by the City's City Council, and signed by the parties.

19.8 Law and Forum

This Agreement shall be governed by and under the laws of the State of New York and the Charter of the City of Rochester. The parties further agree that Supreme Court of the State of New York, held in and for the County of Monroe shall be the forum to resolve disputes arising out of either this Agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.

19.9 No Waiver

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

19.10 Force Majeure

Neither party shall be liable for damages for any delay or failure of delivery arising out of an event of Force Majeure.

19.11 Status as Independent Contractor

The Provider, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.

19.12 Severability

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

19.13 Survival

Without limiting the applicability of other terms and conditions of this Agreement, the terms of this Agreement that, by their nature, are intended to survive any purported or actual termination or expiry of this Agreement will so survive.

Attachment B

Conflict of Interest Disclosure

_____ (“Applicant”) understands that the City of Rochester (“City”) is governed by a Code of Ethics under the City’s Charter in § 2-18. City maintains a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or member of the City shall participate in the selection, award, or administration of a RFP if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the Applicant selected for award: (1) The employee, officer, or agent, (2) Any member of his/her immediate family, (3) His or her partner, or (4) An organization that employs, or is about to employ, any of the above. City’s officers, employees, or agents will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. To the extent permitted by state or local law or regulations, such standards of conduct provide for penalties, sanctions, or other disciplinary action for violation of such standards by the City’s officers, employees, or agents, or by contractors or their agents.

The objective of this form is to identify applicants that may have a conflict under the rules and regulations. The City will then determine whether an exception should be granted or requested. The Corporation Counsel is responsible for conflict of interest determinations, and the Mayor’s Office will engage with the Corporation Counsel in coordination of the exception process.

Name of Applicant(s): _____

Applicant 1: _____

Applicant 1: I am employed at _____ in the position of _____

Applicant 2: _____

Applicant 2: I am employed at _____ in the position of _____

Business Name (if applicable): _____

Property Address: _____

RFP: _____

I/We certify that **(Please ONLY check one option (1 or 2))**:

___1. I/we am/are NOT an employee, agent, consultant, officer, or elected or appointed official of the City of Rochester, and am NOT a relative of an employee, agent, consultant, officer or elected or appointed official of City of Rochester.

___2. I/we AM/ARE an employee agent, consultant, officer or elected or appointed official of the City of Rochester OR I/we am/are a relative of an employee, agent, consultant, officer or elected or appointed official of the City of Rochester.

For Family/Relative Affiliation:

_____ is the family member to whom I am related. (_____).

(Name)

(Relationship)

This family member is employed at _____ in the position of _____

This family member (does) or (does not) perform any duties relating to the RFP.

Applicant #1

Signature _____ Date _____

Applicant #2

Signature _____ Date _____

STATE OF NEW YORK)

COUNTY OF MONROE) ss.:

On the _____ day of _____, 20____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me, or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public