



**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
and
ITRON INC (“Contractor”)
for
ENERGY FORECASTING GROUP THREE YEAR SERVICE MEMBERSHIP**

Contract Number: MA 1100 NS240000006

The City accepts the Contractor’s Offer for the above requirement and enters into the following Contract. This Contract is between Itron Inc having offices at 2111 N. Molter Rd., Liberty Lake, WA 99019 and the City of Austin, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

1.1. This Contract is composed of the following documents in order of precedence:

- 1.1.1. This Document
- 1.1.2. City of Austin Terms and Conditions, dated June 6, 2023, incorporated herein and attached as Exhibit A hereto.
- 1.1.3. Austin Energy Data Handling Controls incorporated herein and attached as Exhibit B, hereto.
- 1.1.4. Contractor’s Offer, dated June 28, 2023, incorporated herein and attached as Exhibit C hereto.
- 1.1.5. Contractor’s Energy Forecasting Group Membership Agreement, incorporated herein and attached as Exhibit D, hereto.

1.2. Term of Contract.

This Contract shall remain in effect for a term of thirty-six (36) months or the City terminates the Contract. The service period shall start August 1, 2023, thru July 31, 2026.

1.3. Delivery.

Delivery of on-site services shall be made to the location specified by the City in the purchase order.

1.4. Designation of Key Personnel.

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor’s and City’s key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager	Shannon Ashburn	858-724-2626	Shannon.Ashburn@itron.com
City Contract Manager	John Oberwortmann	512-322-6419	John.Oberwortmann@austinenergy.com
City Contract Manager	Sathibabu Chakka	512-322-6010	Sathibabu.Chakka@austinenergy.com
City Contract Administrators, Procurement Specialists	Diana McIntosh Tracey Gettridge	512-974-2832 512-974-2998	Diana.McIntosh@austintexas.gov Tracey.Gettridge@austintexas.gov

1.5. Invoices.

The City's preference is to have invoices emailed to John.Oberwortmann@austinenergy.com and Sathibabu.Chakka@austinenergy.com

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

By signing below, Contractor hereby certifies the following are true and will ensure the following will remain true throughout the term of this Contract:

1. That its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That it has not in any way directly or indirectly:
 - a. Colluded, conspired, or agreed with any other person, firm, or corporation, as to the amount of this contract or the terms or conditions of this contract.
 - b. Paid or agreed to pay any other person, firm, or corporation any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the contract.
3. That it has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Contract documents.
4. In accordance with Chapter 176 of the Texas Local Government Code, that the Offeror:
 - a. Does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
 - b. Has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
 - c. Does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.
5. Pursuant to City Council Resolution No. 20191114-056, that its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion

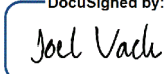
therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy. If the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

- 6. Pursuant to Texas Government Code §2271.002, the Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
- 7. Pursuant to Texas Government Code Chapter 2274, the Contractor verifies that if it will have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of this contract, that it is not owned by or the majority of stock or other ownership interest of the Contractor is not held or controlled by:
 - a. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - c. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.
- 8. Pursuant to Texas Government Code Chapter 2274, the Contractor verifies that if it has 10 or more full-time employees, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- 9. Pursuant to Texas Government Code Chapter 2274, the Contractor certifies that, if they have 10 or more full-time employees: (1) they do not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

ITRON INC

Joe1 Vach

DocuSigned by: Authorized Person

 D4BB7D03A21E4BB...

Signature

VP-Tax and Corporate Treasurer

Title:

11/21/2023

Date:

CITY OF AUSTIN

Diana McIntosh

Printed Name of Authorized Person

Diana McIntosh

Digitally signed by Diana McIntosh
Date: 2023.11.27 15:41:53 -06'00'

Signature

Procurement Specialist III

Title:

Date:

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

EXHIBIT A

These Terms and Conditions are made a part of the Contract.

1 GENERAL

1.1 TERM OF CONTRACT:

The Contract shall commence upon execution of the Contract and shall continue in effect for shall remain in effect for a term of thirty-six (36) months or the City terminates the Contract. The service period shall start August 1, 2023, through July 31, 2026. The initial term IS referred to collectively as the "Contract Term." Upon expiration of the initial term, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re- solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

1.2 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order of Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- A. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- B. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

1.3 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Invoice, whichever is later.
- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- E. The Contractor agrees to accept payment by check or Electronic Funds Transfer for all goods and/or services provided under the Contract.

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

1.4 FINAL PAYMENT AND CLOSE OUT:

A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

1.5 AUDITS AND RECORDS:

A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and, upon mutual agreement, the right to audit, examine, or reproduce, any and all records of the Contractor related to the security audits, under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.

B. Records Retention:

- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
- ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.6 FINANCIAL DISCLOSURES AND ASSURANCE:

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments that are relevant. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

1.7 RIGHT TO ASSURANCE:

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

1.8 STOP WORK NOTICE:

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

1.9 DEFAULT:

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

with the Payment terms of this Contract.

1.10 TERMINATION FOR CAUSE:

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.11 ATTORNEY'S FEES:

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

1.12 TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.13 FRAUD:

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

1.14 DELAYS:

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.15 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.16 INDEMNITY:

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- (1) "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (2) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (3) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
 - i. ANY GROSSLY NEGLIGENT OR CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
 - ii. BODILY INJURY; DEATH OF ANY PERSON; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE GROSSLY NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
 - iii. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

B. INFRINGEMENT CLAIMS. INDEMNIFYING PARTY WILL DEFEND, OR AT ITS OPTION SETTLE, ANY THIRD-PARTY CLAIM AGAINST CUSTOMER ALLEGING THAT ANY ITRON-BRANDED PRODUCTS OR SERVICES, AS DELIVERED TO INDEMNIFIED PARTY, INFRINGE UPON ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS WITHIN THE UNITED STATES OF AMERICA. IF INDEMNIFYING PARTY RECEIVES NOTICE OF AN ALLEGED INFRINGEMENT BY ANY PRODUCTS OR SERVICES, OR IF INDEMNIFYING PARTY REASONABLY BELIEVES THAT AN INFRINGEMENT CLAIM IS LIKELY, INDEMNIFYING PARTY MAY STOP DELIVERY OF THE AFFECTED PRODUCTS OR SERVICES WITHOUT LIABILITY FOR FAILURE TO DELIVER THEM. INDEMNIFYING PARTY WILL HAVE THE RIGHT, AT ITS SOLE OPTION, TO OBTAIN THE RIGHT FOR INDEMNIFIED PARTY TO CONTINUE USE OF THE AFFECTED PRODUCTS OR SERVICES, OR TO REPLACE OR MODIFY THE AFFECTED PRODUCTS OR SERVICES SO THAT THEY ARE NO LONGER ALLEGED OR BELIEVED TO INFRINGE, IF IT CAN BE DONE WITHOUT SIGNIFICANT LOSS OF FUNCTIONALITY. IF NEITHER OF THE FOREGOING OPTIONS ARE AVAILABLE TO INDEMNIFYING PARTY ON COMMERCIALY REASONABLE TERMS, INDEMNIFYING PARTY MAY TERMINATE INDEMNIFIED PARTY'S USE OF THE AFFECTED PRODUCTS OR SERVICES WITHOUT FURTHER LIABILITY UNDER THIS SECTION, IN WHICH CASE INDEMNIFYING PARTY WILL REFUND TO INDEMNIFIED PARTY THE DEPRECIATED VALUE OF THE AFFECTED PRODUCT AND ANY PREPAID UNUSED PORTION OF THE SERVICE.

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

- C. AS A CONDITION TO THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER SECTIONS 18.A AND 18.B, ABOVE, THE INDEMNIFIED PARTY MUST: (I) PROMPTLY NOTIFY THE DEFENDING PARTY IN WRITING OF THE CLAIM; (II) GIVE THE INDEMNIFYING PARTY ALL REASONABLY REQUESTED INFORMATION AND ASSISTANCE IN CONNECTION WITH THE CLAIM IN A TIMELY MANNER; AND (III) GIVE THE INDEMNIFYING PARTY THE SOLE RIGHT TO CONTROL THE DEFENSE AND SETTLE OF THE CLAIM. THE INDEMNIFYING PARTY SHALL NOT ENTER INTO ANY SETTLEMENT OF A CLAIM AGAINST INDEMNIFIED PARTY WITHOUT THE INDEMNIFIED PARTY'S PRIOR WRITTEN CONSENT UNLESS: (A) THERE IS NO ADMISSION OF FAULT OF THE INDEMNIFIED PARTY; (B) THERE IS NO INJUNCTIVE OR OTHER NON-MONETARY RELIEF AGAINST THE INDEMNIFIED PARTY; AND, (C) THE SETTLEMENT INCLUDES THE CLAIMANT'S OR PLAINTIFF'S RELEASE OF THE INDEMNIFIED PARTY FROM ALL LIABILITY IN RESPECT OF THE CLAIM.
- D. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.
- F. INDEMNIFYING PARTY WILL HAVE NO OBLIGATION UNDER SECTION 18.B ABOVE FOR ANY INFRINGEMENT CLAIM IN WHICH INFRINGEMENT IS ALLEGED OR CAUSED BY (I) THE COMBINATION, OPERATION OR USE OF ANY PRODUCT OR SERVICE PROVIDED BY INDEMNIFYING PARTY WITH ANY PRODUCT OR SERVICE (INCLUDING THIRD-PARTY SOFTWARE AND EQUIPMENT) NOT PROVIDED BY INDEMNIFYING PARTY, (II) ANY MODIFICATION TO PRODUCTS OR SERVICES MADE EITHER WITHOUT INDEMNIFYING PARTY'S PRIOR WRITTEN CONSENT OR BY A PERSON OTHER THAN INDEMNIFYING PARTY OR AN AUTHORIZED REPRESENTATIVE OF INDEMNIFYING PARTY , (III) FAILURE TO USE UPDATED OR MODIFIED PRODUCTS OR SERVICES AS PROVIDED BY INDEMNIFYING PARTY, (IV) USE OF ANY RELEASE OF INDEMNIFYING PARTY SOFTWARE OR ANY FIRMWARE OTHER THAN THE MOST CURRENT RELEASE MADE AVAILABLE TO INDEMNIFIED PARTY, (V) USE OF PRODUCTS OR SERVICES NOT IN ACCORDANCE WITH THIS AGREEMENT AND APPLICABLE DOCUMENTATION, OR (VI) INDEMNIFYING PARTY'S COMPLIANCE WITH ANY DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS PROVIDED BY INDEMNIFIED PARTY. IN ADDITION, INDEMNIFYING PARTY SHALL NOT BE LIABLE FOR ENHANCED OR PUNITIVE DAMAGES THAT COULD HAVE BEEN AVOIDED OR REDUCED BY ACTIONS WITHIN THE CONTROL OF INDEMNIFIED PARTY.
- G. EXCLUSIVE REMEDY. THIS SECTION 18 CONSTITUTES INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

1.17 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.18 CONFIDENTIALITY:

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

1.19 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

- iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.20 PUBLICATIONS:

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

1.21 ADVERTISING:

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

1.22 NO CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

1.23 GRATUITIES:

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

1.24 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

1.25 INDEPENDENT CONTRACTOR:

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

1.26 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by either party without the prior written consent of the other party.. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

1.27 WAIVER:

The claim or right arising out of a breach of the Contract cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

1.28 MODIFICATIONS:

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any City Purchase Order, Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

1.29 INTERPRETATION:

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1.30 DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

1.31 JURISDICTION AND VENUE:

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

1.32 INVALIDITY:

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

1.33 HOLIDAYS:

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/department/official-city-holidays>

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.34 SURVIVABILITY OF OBLIGATIONS:

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

1.35 COOPERATIVE CONTRACT:

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

1.36 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination

Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.

- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.37 SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or Subcontractor Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager no later than the 10th calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written Contract between the Contractor and Subcontractor. The terms of the Subcontract may not conflict with the terms of the Contract and shall contain provisions that
- i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
 - ii. Prohibit the Subcontractor from further Subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further Subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. Require Subcontractors to submit all Invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its Invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. Require that all Subcontractors obtain and maintain, throughout the term of their Contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any Contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.

1.38 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:
 - City of Austin Purchasing Office
 - P.O. Box 1088
 - Austin, Texas 78767
 - OR
 - PURInsuranceCompliance@austinTexas.gov
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that Contractor's General Liability policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- ix. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

- x. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
 - xi. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
 - xii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. **Worker’s Compensation and Employers’ Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker’s Compensation Act (Section 401). The minimum policy limits for Employer’s Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.
 - (1) The Contractor’s policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
 - b. 30 Days’ Notice of Cancellation, Form WC420601, or equivalent coverage.
 - ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$2,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
 - b. Independent Contractors coverage (Contractor/Subcontracted work);
 - c. Products/Completed Operations Liability for the duration of the warranty period;
 - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Days’ Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
 - iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$2,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
 - b. 30 Days’ Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

- iv. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

1.39 Designation of Key Personnel

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event, it becomes necessary for Contractor to replace any key personnel, the replacement personnel shall be an individual having equivalent experience and competence in executing projects such as the one described in this SOW. Additionally, Contractor shall promptly notify the City in writing and obtain City's written approval for the replacement personnel. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

2 SERVICES

2.1 WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
 - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

3 TECHNOLOGY

3.1 BUSINESS CONTINUITY AND DISASTER RECOVERY:

The Contractor shall maintain a business continuity and disaster recovery plan.

3.2 DATA

- A. **DATA OWNERSHIP:** The City owns all right, title and interest in City Data. Contractor agrees it has no title or interest to City Data. The Contractor shall not access City User accounts or City Data,

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Contract, or (4) at the City's written request.

- B. **DATA PROTECTION:** Protection of personal privacy and City Data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of City Data at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City Data and comply with the following conditions:
- i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of City Data, including non-public data. Such security measures shall be in accordance with recognized industry practice.
 - ii. All non-Public data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the non-Public data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this Contract.
 - iii. The City shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-Public data shall be identified and made a part of this Contract.
 - iv. At no time shall any City Data – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any Contractor Affiliate for non-City use.
 - v. The Contractor shall not use any information collected in connection with the Service it provides under the Contract for any purpose other than fulfilling the Contract requirements, which shall include continuing to maintain, develop, and improve its products and services.
- C. **COMPLIANCE WITH ACCESSIBILITY STANDARDS:** The Contractor shall comply with and adhere to the Accessibility Standards of Section 508, as amended, of the Rehabilitation Act of 1973.
- D. **SECURITY:** The Contractor shall, upon request, disclose its non-proprietary security processes and technical limitations to the City and shall provide protection of the City Data. The City and the Contractor shall understand and memorialize each other's roles and responsibilities in the Contract documents. Contractor agrees to adhere to the requirements of the Data Handling Controls. Contractor agrees these provisions shall survive the termination of the Contract.
- E. **COMPLIANCE WITH CHAPTER 521 OF THE TEXAS BUSINESS AND COMMERCE CODE:** Contractor shall comply with all requirements of Chapter 521 of the Texas Business and Commerce Code, including being responsible for a program that protects against the unlawful use or disclosure of Personal Identifying Information (PII) or Sensitive Personal Information (SPI) collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also include appropriate corrective action in event of any Security Incident or Data Breach, and proper methods of destroying records containing PII or SPI.
- F. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** The Contractor shall inform the City of any Security Incident or Data Breach as required by the Data Handling Controls or other relevant part of the Contract.
- i. **Incident Response:** The Contractor may need to communicate with outside parties regarding a

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

Security Incident or Data Breach, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Security Incidents or Data Breaches, especially notification and subsequent communication, should be handled on an urgent basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Contract, including the Data Handling Controls.

- ii. **Security Incident Reporting Requirements:** The Contractor shall report a Security Incident to the appropriate City identified contact immediately and without delay, as defined in the SLA.
- iii. **Data Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any City Data, whether or not that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify by telephone the appropriate City identified contact as soon as reasonably possible, but no later than twenty-four (24) hours, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.
- iv. **Data Breach Responsibilities:** The following subsection describes the Contractor's supplemental responsibilities that apply when a Data Breach is suspected or occurs with respect to Personally Identifiable Information or City Confidential Information within the possession, custody or control of Contractor.
 - (1) The Contractor, unless stipulated otherwise (including in the Data Handling Controls), shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Security Incident.
 - (2) The Contractor, unless stipulated otherwise, shall promptly notify by telephone the appropriate City identified contact as soon as reasonably possible but no later than twenty-four (24) hours, unless shorter time is required by applicable law (or by another section of the Contract), if it confirms that there is, or reasonably believes that there has been a Data Breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the Services.
 - (3) Unless otherwise stipulated, if a Security Incident or a Data Breach is a direct result of the Contractor's breach of its Contract obligations, the Contractor shall bear all costs to remedy, including but not limited to (1) the investigation and resolution of the Security Incident or the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause analysis.

3.3 DATA HANDLING CONTROLS:

Contractor hereby agrees to the "Data Handling Controls" attached as Exhibit B to this Contract, which constitute the Contractor's minimum required data security program to safeguard the integrity of City Data received by Contractor.

4 DEFINITIONS

- 1. **"Affiliate"** – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies,

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.

2. **"Amendment"** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
3. **"Authorized Persons"** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
4. **"Change Order Request"** – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.
5. **"Change Order Response"** – the written document provided to the City by Contractor in response to City's Change Order Request.
6. **"City Confidential Information"** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data, and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.
7. **"City Data"** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available and provided by the City to an Authorized Person exclusively in connection with this Contract.
8. **"City Identified Contact"** – the person or persons designated in writing by the City to receive security incident notifications.
9. **"City"** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **"Cloud Service"** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.
11. **"Confidential Information"** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **"City Confidential Information"** is a subset of Confidential Information.
12. **"Contract"** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **"Contract Price"** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **"Contractor"** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **"Contractor Information"** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS**

16. **“Contractor Software”** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.
17. **“Data Breach”** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City’s or City’s customers’ unencrypted Personally Identifiable Information or City Confidential Information.
18. **“Documentation”** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.
19. **“Facility”** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **“FACTA”** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **“Final Acceptance Date”** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **“IaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.
23. **“Infrastructure-as-a-Service” (IaaS)** – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).
24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
“Non-Subscription Services” – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.
27. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
28. **“Party”** or **“Parties”** – the City and Contractor, individually or together, as applicable.
29. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).
30. **“Platform-as-a-Service” (PaaS)** – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the

CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS

deployed applications and possibly application hosting environment configurations.

31. **"Purchase Order"** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.
32. **"SaaS Software Application"** and **"SaaS Software"** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
33. **"SaaS Subscription Schedule"** – the document, part of the Contract, executed by both Parties that sets out the Parties' rights and obligations with respect to City's access to and use of the SaaS Software Application.
34. **"Security Incident"** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
35. **"Service Level Agreement" (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
36. **"Service Levels"** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.
37. **"Services"** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
38. **"Software"** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.
39. **"Software-as-a-Service" (SaaS)** – the Services provided to the City to use the Contractor's offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
40. **"Specifications"** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
41. **"Statement/Scope of Work"** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City's Service needs and expectations.
42. **"Subscription Services"** – City's access to and use of and Contractor's provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
43. **"Third Party"** – any natural person or legal entity other than Contractor and City.
44. **"Transition Date"** – the date upon which it is established to City's satisfaction that the SaaS Software Application is stable enough to support City's production processing.

45. **“User Information”** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor’s supervision or control.
46. **“User”** – City’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
47. **“Work Product”** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor’s Software.

Austin Energy Data Handling Controls	
Rev. No.: 2.0	Date: October 5, 2018
Owner: Enterprise Information Security	Category: Information Security
Author: Michael Goin	SME: Mike Goin, AE Risk Management, AE Legal
	Doc Type: Contract Exhibit

CONTENTS

Contents 1

1. Data Handling Controls: Security Directives and Requirements 2

 1.1. Contractor Responsibilities regarding treatment of City Data 2

 1.2. Location Parameters 2

 1.3. Specific Security Directives..... 2

 1.4. Data Disposition 3

 1.5. General Compliance Requirements 3

 1.6. Logging/Auditing Requirements 4

 1.7. Media Reuse..... 5

 1.8. Security..... 5

2. Data Handling Controls: Additional Compliance Requirements 6

 2.1. Contractor Practices..... 6

 2.2. Security Incident Reporting Procedures 8

 2.3. Remediation 8

 2.4. Recovery..... 9

 2.5. Lessons Learned 9



1. DATA HANDLING CONTROLS: SECURITY DIRECTIVES AND REQUIREMENTS

1.1. Contractor Responsibilities regarding treatment of City Data

- 1.1.1. The City requires that controls (“Data Handling Controls” or “DHC”) be in place to manage risk to the confidentiality, integrity and availability of City Confidential Information in any form in the care, custody or control of Contractor. These Data Handling Controls represent a minimum standard for protection. Additional controls required under applicable laws, regulations, or standards governing specific forms of data (e.g., health information, credit cardholder data) may also apply.
- 1.1.2. Contractor agrees to comply with these Data Handling Controls in performing the Services (including information technology-based Services) and in providing the Deliverables under the Contract. Contractor accepts all responsibility and liability for the security, integrity and protection of all City Data in its custody or control, including but not limited to when City Data is received, transmitted, processed, stored, backed up, archived, returned, or as occurs otherwise during performance of Services, including that involving a subcontractor. Contractor agrees that any damages or liability arising from any violation of these Data Handling Controls, including damage to City Data as well as all work to restore City Data and its integrity, are Contractor’s responsibility. Contractor agrees that compliance with these Data Handling Controls is not an affirmative defense to any losses, disclosures, corruption or other damage to City Data which may occur for which Contractor is responsible, as Contractor acknowledges and agrees that there may be situations for which the Data Handling Controls may be inadequate to reasonably protect City Data as a project matures during the term of the Contract, and Contractor agrees to use appropriate additional measures in its reasonable judgment to protect City Data in such situations.

1.2. Location Parameters

- 1.2.1. The authorized geographical data center region for the storage and processing of City Data under this Contract is the contiguous United States.
- 1.2.2. Contractor may utilize non-US based personnel but must ensure that City Confidential Information cannot be stored, viewed, downloaded, or transported outside the contiguous United States.

1.3. Specific Security Directives

- 1.3.1. For access to City Data, Contractor must ensure that only the minimum amount of rights is granted to an Authorized Person as required to perform Contractor’s contractual duties.

- 1.3.1 Unless otherwise approved by the City in advance, in writing, Contractor must encrypt all City Confidential Information. Only an Authorized Person within the Secure Service Area may view unencrypted City Confidential Information.
 - 1.3.1.1 Contractor employees and subcontractors who have provided written certification showing they meet the minimum requirements of these Data Handling Controls are allowed to view unencrypted City Confidential Information if necessary to provide the Services.
 - 1.3.1.2 The Secure Service Area shall be designed in such a way as to prohibit the unauthorized viewing, modification, or destruction of any unencrypted City Confidential Information (including any image). Contractor may not remove City Confidential Information from the Secure Service Area unless approved by the City in advance in writing.
- 1.3.2 Unencrypted City Confidential Information may not be stored on any Contractor or subcontractor Endpoint Device.
- 1.3.3 Contractor must have in place its own internal security program that includes policies using applicable industry best practices. Contractor will provide evidence of these policies and procedures within ten business days of written request by the City.
- 1.3.4 Contractor must detach all removable storage media containing City Confidential Information from any device when not in use and store the media in Contractor's physically-secure location.
- 1.3.5 Contractor must ensure that only an Authorized Person may access devices containing City Data.

1.4 Data Disposition

- 1.4.1 Contractor agrees, upon written request, to return all City Data obtained under this Contract (including this DHC) or otherwise in its care, custody or control to the originating City department, and to delete any remaining copies from Contractor's storage/production/use/possession at the end of the engagement, including:
 - 1.4.1.1 as stated in any scope of work and/or
 - 1.4.1.2 at City's request, or upon
 - 1.4.1.3 Contractor's failure to follow the compliance directives of this Data Handling Controls document.

1.5 General Compliance Requirements

- 1.5.1 Contractor's failure to comply with any provision of these Data Handling Controls is a material default under the Contract.



1.5.2 Contractor agrees that City or its authorized representatives may audit or review Contractor's compliance with these Data Handling Controls under Contract Section 0300, Paragraph 17, Audits and Records. Except in an emergency (including a Breach or Security Incident), such audit or review shall be conducted only during normal business hours and without disrupting normal business practice, and City shall provide reasonable advance notice of exercising its right of audit or review.

Audits or reviews may include, but are not limited to:

- system, security, application, operating system, and database logs to the extent such request does not conflict with confidentiality clauses Contractor has with other customers;
- physical access logs at all data centers;
- data center location or ownership changes;
- access control procedures;
- procedures for the physical and digital destruction of media;
- environment changes that have the potential for outages;
- workplace inspections for compliance with these Data Handling Controls and review of any Vendor supplied documentation submitted to document/demonstrate compliance; and
- procedures for and evidence of routine testing and updating of systems to prevent against attacks.

1.6 Logging/Auditing Requirements

1.6.1 Contractor must create , as appropriate and where Contractor has control of the systems and logs, system, security, application, operating system, and database logs:

1.6.1.1 when Contractor creates, reads, updates, or deletes City Data;

1.6.1.2 when Contractor initiates a network connection;

1.6.1.3 when Contractor accepts a network connection;

1.6.1.4 at user authentication and authorization, including failed access attempts;

1.6.1.5 for user login and logout;

1.6.1.6 when Contractor grants, modifies, or revokes access rights, privilege levels, and permissions, firewall rules, and user passwords;

- 1.6.1.7 when Contractor makes any system, network, or services configuration changes, including installation of software patches and updates, other installed software changes, operating system and Hypervisor activity;
 - 1.6.1.8 at application process startup, shutdown, or restart;
 - 1.6.1.9 in the case of any application process abort, failure, or abnormal end, especially due to resource exhaustion or reaching a resource limit or threshold (such as for CPU, memory, network connections, network bandwidth, disk space, or other resources), and in cases of failure of network services, such as DHCP or DNS, or hardware fault; and
 - 1.6.1.10 if contractor detects suspicious or malicious activity, such as from an Intrusion Detection or Prevention System (IDS/IPS), anti-virus system, or anti-spyware system.
- 1.6.2 Contractor will retain system activity logs (and make all such logs available to City) for a period of three years after final payment on this Contract, or three years after all forensic, audit and litigation matters are resolved, whichever is longer.
- 1.6.3 Contractor will review all relevant security logs for anomalies for potential Security Incidents and forensic analysis.

1.7 Media Reuse

- 1.7.1 Contractor must promptly Securely Erase all City Confidential Information from any permanent or non-volatile storage media:
 - 1.7.1.1 once immediate use of such media is no longer necessary,
 - 1.7.1.2 at City's request, or
 - 1.7.1.3 within 30 days of termination of the Contract.
- 1.7.2 For all endpoint and mobile devices containing City Data, Contractor agrees to utilize full disk encryption to ensure all City Confidential Data is encrypted at rest.
- 1.7.3 Contractor shall Securely Erase all City Data by destructively overwriting all City Data to ensure that even deleted files cannot be recovered from the media.

1.8 Security

- 1.8.1 Contractor must limit access to the Hypervisor to only those qualified and pre-approved staff who have job functions dedicated to performing work on the Hypervisor. All access logs to the Hypervisor must only be reviewed by qualified personnel approved by Contractor.

- 1.8.2 City retains ownership over all City Data.
- 1.8.3 Contractor must use industry best practices for encryption of City Confidential Information at rest and in transit.
- 1.8.4 Contractor will ensure that all electronic and physical access to City Data is secured. Contractor must verify the identification, authentication, and authorization of each user and their specific role and access level, and Contractor must immediately block all physical and electronic access to City Data for any terminated employee.
- 1.8.5 Contractor must use due diligence to evaluate and respond to potential Security Incidents and events that create suspicions of unauthorized disclosure, modification, or destruction of City Data. The response must restore the confidentiality, integrity, and availability of the environment(s) compromised or potentially compromised, and establish root causes and remediation steps and determine the nature and extent of the event. If Contractor determines that there has been a Security Incident involving City Data (including City Confidential Information), Contractor shall report such Security Incident to the City PM within twenty-four (24) hours of determination.
- 1.8.6 Upon written request, Contractor shall make its then current key management policy for encryption keys and certificates available, to view, to the City within 10 business days.

2 DATA HANDLING CONTROLS: ADDITIONAL COMPLIANCE REQUIREMENTS

2.3 Contractor Practices

- 2.3.1 In addition to any other requirements of these Data Handling Controls, Contractor agrees it shall maintain and enforce its own reasonable and adequate security procedures during the term of the Contract for the protection of City Data, which procedures must be designed to protect City Data (especially City Confidential Information) and the hosting environment from a Security Incident, including using Contractor's best efforts to avoid the unauthorized access, modification or loss during transmission and storage, including the use of data encryption techniques described herein.
- 2.3.2 Contractor confirms that all use, transmission, storage, and destruction of City Confidential Information shall be in strict accordance with all terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2.3.3 Contractor agrees that City may conduct, at no extra cost to City, network penetration tests of all systems at Contractor's facilities used for the processing,

storage or transmission of City Data. City may also, at its discretion, contract out penetration testing services to a third party. City shall provide reasonable notice of each network penetration test and shall conduct each network penetration test at reasonable times. If, following any testing, vulnerabilities are identified, Contractor shall promptly document Contractor's remediation action plan and provide it to the City PM within three business days, including at a minimum:

- 2.1.3.1.1. nature of the vulnerability including scope and breadth,
 - 2.1.3.1.2. potential impact to service of vulnerability and subsequent mitigation,
 - 2.1.3.1.3. summary of mitigation, and
 - 2.1.3.1.4. known or suspected loss of City Data and ability to recover; and
- 2.1.3.2. implement the remediation action plan in a mutually agreed timeframe. The implementation of remediation activity must be communicated to and approved by the City in advance, ensuring the avoidance of unplanned outages; and
- 2.1.3.3. provide City with written documentation and reports on the status of all modifications to correct such vulnerabilities, including interim and final reports.
- 2.3.4 Contractor shall perform appropriate background checks on its employees and subcontractors with access to City Confidential Information.
- 2.3.5 Contractor shall prohibit access to City Confidential Information for Contractor employees and subcontractors who fit into any of the following classifications:
- 2.3.5.1 Anyone who has been convicted of a felony offense;
 - 2.3.5.2 Anyone who has been convicted of a misdemeanor offense related to computer security, theft, fraud or violence; or
 - 2.3.5.3 Anyone who is currently awaiting trial for any of the above-stated offenses.
- 2.3.6 The COA CISO may, at any time in writing, require Contractor's employees and subcontractors to submit to additional background checks. Continued access to City Data, including City Confidential Information, and secured facilities shall be contingent on the Contractor's employee's agreement to submit to a background check and the results of the background check. Refusal shall be grounds for immediate termination of the User ID and password, and where applicable, access to COA premises and networks, and any ID badge issued shall immediately be decommissioned.



2.4 Security Incident Reporting Procedures

- 2.4.1 Contractor must telephone the City PM and e-mail AE-Exec-Info-Sec@austinenergy.com within twenty-four (24) hours of when Contractor discovers, is notified of, or otherwise has knowledge of any Security Incident:
 - 2.4.1.1 person reporting the Security Incident ;
 - 2.4.1.2 person who discovered the Security Incident;
 - 2.4.1.3 date and time the Security Incident was discovered;
 - 2.4.1.4 nature of the Security Incident;
 - 2.4.1.5 actions taken and by whom;
 - 2.4.1.6 involved system and possible interconnectivity with other systems;
 - 2.4.1.7 description of the information lost or compromised, or potentially lost or compromised;
 - 2.4.1.8 storage medium from which information was lost or compromised;
 - 2.4.1.9 controls in place to prevent unauthorized use of the lost or compromised information;
 - 2.4.1.10 number of individuals potentially affected;
 - 2.4.1.11 whether law enforcement or other external agencies were involved for any reason and, if so, those contacted; and
 - 2.4.1.12 any other relevant information pertaining to the Security Incident.
- 2.4.2 Within four hours of discovering the Security Incident, the Contractor shall contain the Security Incident.
- 2.4.3 Contractor shall investigate (with City's participation, if so desired by City and to the extent possible based on Contractor's contractual commitments with other customers) the Security Incident, perform a root cause analysis, and create and provide to the City a remediation plan within seven days of becoming aware of the Security Incident or as soon as reasonably possible based on the circumstances of the Security Incident.

2.5 Remediation

- 2.5.1 As soon as practicable, and at no additional cost to the City, Contractor will remedy the source of the Security Incident, as required by the remediation plan.
- 2.5.2 The Contractor shall reimburse the City for all costs to City associated with the Security Incident.

2.6 Recovery

- 2.6.1 Within seven days of completing the remediation plan or as soon as reasonably possible based on the circumstances of the Security Incident, Contractor must provide the City reasonable written assurance declaring full system recovery, signed by an executive with proper authority, attesting that the Security Incident is remediated and shall not recur.

2.7 Lessons Learned

- 2.7.1 Contractor shall, at no cost to the City and as part of the Services, update policies, procedures, or enforcement methods in a manner designed to prevent similar Security Incidents from recurring and provide summary of updates to City within 14 days of declaring full system recovery.

3. Definitions

- 3.1.1. **Authorized Person** – Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
- 3.1.2. **City Project Manager or City PM** – City of Austin project manager, or their designee, assigned to this Contract.
- 3.1.3. **City Data** - data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available and provided by the City to an Authorized Person exclusively in connection with this Contract. City Data may be either non-confidential information or City Confidential Information.
- 3.1.4. **City Confidential Information** – includes: (A) information provided by City that is marked or identified as confidential, (B) information of City including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (C) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from confidential information, (D) Personal Identifying Information, (E) Sensitive Personal Information, and (F) all other information made confidential by federal, state or local law or regulation. City Confidential Information is a subset of City Data.
- 3.1.5. **Data Center Region** – means the authorized geographical region for the storage and processing of City Data, and is presently only the contiguous United States.
- 3.1.6. **Data Handling Controls** – this document
- 3.1.7. **Endpoint Device** – Any network-capable computer hardware device including, but not limited to desktop computers, laptops, smart phones, tablets, thin

clients, printers or other specialized hardware such as POS terminals and smart meters.

- 3.1.8. **Hypervisor** – a piece of computer software, firmware or hardware that controls the flow of instructions between guest Operating Systems and the physical hardware such as CPU, disk storage, memory, and network interface cards within a virtual environment
- 3.1.9. **Personal Identifying Information (“PII”)** – means any information that, either alone or in conjunction with other information, identifies an individual, including an individual’s:
- 3.1.9.1. name, social security number, date of birth, or government-issued identification number;
 - 3.1.9.2. mother's maiden name;
 - 3.1.9.3. unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; or
 - 3.1.9.4. unique electronic identification number, address, or routing code
- 3.1.10. **Sensitive Personal Information (“SPI”)** – means
- A. an individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
 - (i) Social Security Number;
 - (ii) Driver’s License Number or government-issued ID; or
 - (iii) an individual's account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account, or
 - B. information that identifies an individual and relates to the physical or mental health or condition of the individual, or the provision of health care to the individual.
 - C. SPI does not include publicly available information.
- 3.1.11. **Securely Erase** – secure deletion of any information, including a recognized destructive delete algorithm, for example, at least seven overwrites with pseudorandom data or at least seven overwrites with zeroes

- 3.1.1. **Security Incident** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or compliance requirements under these Data Handling Controls; or violation or imminent threat of violation of industry standard security practices

- 3.1.2. **Secure Service Area** – a physically and electronically secured area, with secure communications, within Contractor’s facility where unencrypted City Confidential Information is secured from unauthorized access



2349 - Austin Energy
 PO Box 3546
 Austin, Texas 78764-3546

Energy Forecasting Group 3 Year Service Membership Pricing
Date of Quote: 6/28/2023

Membership	Service Contract#	Component Name	Agreement Dates		Number of Months	Price Current Annual Fee/Unit	Aug 1, 2023 - July 31, 2024	Aug 1, 2024 - July 31, 2025	Aug 1, 2025 - July 31, 2026
			Start	End					
Energy Forecasting Group	SC00002674	EFG Res	8/1/2023	7/31/2026	36	\$ 4,855.85	\$ 4,855.85	\$ 5,244.32	\$ 5,663.86
Energy Forecasting Group	SC00002674	EFG Com	8/1/2023	7/31/2026	36	\$ 4,855.85	\$ 4,855.85	\$ 5,244.32	\$ 5,663.86
Membership total							\$9,711.70	\$10,488.64	\$11,327.73
Total Fees (USD)							\$31,528.06		

Comments and/or Assumptions:

- 1) 3 year PO required. Will be invoiced annually.
- 2) 8% annual increase applied.
- 3) This attachment A pricing is an estimate and system rounding may change the final pricing.

Customer Signature of Acceptance: _____ Date: _____



Energy Forecasting Group (EFG)

Membership Agreement

This Membership Agreement (the "**Agreement**") is between Itron Inc. ("**Itron**") and Austin Energy ("**Customer**"). Customer is requesting annual membership in Itron's Energy Forecasting Group.

Membership Overview

Itron offers end-use data and forecasting support services through membership in its Energy Forecasting Group (EFG). EFG data, models, and support services provide members with a means to develop forecast models that capture the impact of changing end-use ownership and efficiency trends on energy and demand. Membership is segmented into three sectors: residential, commercial and industrial. Customer can choose to join one, two or all three.

Features & Benefits

Members provide the direction of the group, which continues to evolve over time. Currently, Itron provides support services and the following data to EFG members:

Statistically Adjusted End-use (SAE) Models

The SAE method embodies the integration of end-use concepts and trends into a monthly econometric forecasting framework. Residential and commercial electric and gas SAE models are available to EFG Customers. In addition, EFG Customers have access to a set of residential electric end-use analysis spreadsheets that can be used to assess the impact of changes in technology market share on end-use efficiency; this includes residential lighting.

Other Benefits

- Receive periodic memos on timely subjects such as appliance standards, emission standards, and regional pricing.
- Annual summary on regional end-use energy trends and factors driving these trends.
- Limited support with SAE modeling issues.
- SAE spreadsheets for the EIA *Extended Polices Case* (when EIA forecast is available).
- Receive annual energy survey report and other industry surveys conducted by Itron.
- Provide input on future research and membership deliverables.

Annual Meeting

Itron coordinates an annual meeting that includes long-term forecasting and end-use topic discussions. Members attend this meeting at a reduced registration fee.

Residential EFG Group

- Annual updates to the electric and gas versions of the basic SAE spreadsheet and associated MetrixND files for the nine census divisions.
- Periodic updates to the Separate Electric End-Use Analysis Spreadsheets which include:
 - Central Air Conditioners
 - Room Air Conditioners
 - Gas Space Heating
 - Refrigerators
 - Freezers
 - Electric Water Heating
 - Gas Water Heating
 - Dryers
 - Dishwashers
- Limited technical support of EPRI's REEPS Model
- Updates to the Extended Policies Case

Commercial EFG Group

- Annual updates to the electric and gas versions of the basic SAE spreadsheet and associated MetrixND files for the nine census divisions.
- Limited technical support of EPRI's COMMEND Model
- Updates to the Extended Policies Case

Industrial EFG Group

- Annual updates to the electric version of the basic SAE spreadsheet and associated MetrixND project file on the national level.
- Limited technical support of EPRI's INFORM Model

Membership Terms and Fees

Customer is joining the following EFG membership sectors:

_____ Residential Sector, \$4,855.85 per year
_____ Commercial Sector, \$4,855.85 per year
_____ Industrial Sector, \$4,855.85 per year

Customer will be invoiced \$9,711.70 for the one (1) year membership term beginning August 1, 2023. Thereafter, this Agreement automatically renews for successive one (1) year terms unless Customer provides written notice to Itron of its intent not to renew the Agreement at least thirty (30) days prior to the expiration of the then-current term. Itron reserves the right to increase the Membership Fee annually. Should the membership fee increase during the term of the Agreement, Itron will provide Customer thirty (30) days written notice prior to the increase. There are no refunds of memberships fees already paid. All invoices are due net 30.

Customer

Itron Inc.

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date

Please fax or email a pdf file of the signed form to the contact person below.

Shannon Ashburn,
Itron, Inc.
858-724-2690 (fax)
shannon.ashburn@itron.com