

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: System Safety

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute SFMTA Contract No. SFMTA 2016/29 with Intelx Technologies, Inc. for professional software and configuration services to implement an SFMTA Safety Management Database System, for a total not-to-exceed amount of \$1,391,199 and a term of five years effective January 1, 2016.

SUMMARY:

- The SFMTA seeks to replace its existing paper-driven Safety Management Database System with a new System that will standardize safety management throughout the Agency, track multiple safety management functions under one system, encourage accountability, and enhance communication about safety by sharing of appropriate safety data among safety professionals, supervisors, trainers.
- In 2013, the SFMTA issued a Request for Information (RFI) to software vendors seeking information regarding their safety management software and requesting software demonstrations to determine whether their software product capabilities met SFMTA's needs. Three vendors responded to this RFI. SFMTA staff determined that Intelx gave SFMTA the broadest safety data management capabilities to standardize safety management throughout the Agency.
- On December 30, 2014, the SFMTA entered into a contract with Intelx Technologies (Contractor) The contract did not require SFMTA Board approval because the contract amount was within the Director of Transportation's contract delegation authority.

ENCLOSURES:

1. SFMTAB Resolution
2. Software and Configuration Services Contract

APPROVALS:

	DATE
DIRECTOR _____ 	<u>11/18/15</u>
SECRETARY _____ 	<u>11/18/15</u>

ASSIGNED SFMTAB CALENDAR DATE: December 1, 2015

PURPOSE

Authorizing the Director of Transportation to execute SFMTA Contract No. SFMTA 2016/29 with Intelx Technologies, Inc. for professional software and configuration services to implement an SFMTA Safety Management Database System, for a total not-to-exceed amount of \$1,391,199 and a term of five years, effective January 1, 2016.

GOAL

This contract supports the following SFMTA Strategic Plan Goal and Objective:

Goal 1: Create a safer transportation experience for everyone

Objective 1.3: Improve the safety of the transportation system

DESCRIPTION

The SFMTA's Existing Safety Management Database

The SFMTA currently uses the TransitSafe Safety Management Database implemented in 2005 to track training, corrective actions, incidents, audits, and generate regulatory reports. The existing database does not enable the SFMTA to effectively manage all safety incidents because information is not timely entered into the database, not all incidents are reported or entered into the database and the analytical tools to assess root causes and corrective actions are limited. Also, there is no quick and comprehensive view of incidents for safety professionals and management to assess safety issues in real-time.

- Timeliness - The existing database is primarily paper-based, with handwritten reports on paper forms submitted for manual input. This results in information on incidents and accidents that is not timely entered. Over the last three years, a yearly average of 10,097 transit related accident and incident reports were manually input by Safety Division staff after an average of five days from the date the report was received.
- Not a comprehensive database – Many of the non-transit incidents reports such as hazards, security incidents, and workplace injuries are not entered into the existing database and are not tracked using a centralized computer software system.
- Incident analysis - To avoid reported transit incidents from being repeated, System Safety investigators must analyze the incidents reported in the database, identify the root causes, and then establish corrective actions. This requires in-depth of analysis of the reported incidents. However, the existing database does not have analytical tools that can aid with this analysis.
- Incident reporting - The existing database does not provide incident summaries to assist SFMTA senior management.

Because of these identified issues, the SFMTA sought to replace the existing database with a comprehensive safety management software and database that will track multiple functions under one system, with an emphasis on eliminating paper reports and using electronic data entry forms.

The SFMTA's Request for Information

On March 20, 2013, the SFMTA issued a Request for Information (RFI) to various software vendors seeking information regarding their safety management software and requesting software demonstrations to determine whether their software product capabilities met the SFMTA's needs. Three vendors responded to this RFI, including TRA, our current TransitSafe vendor, Vigil Solutions, and Intelx Technologies. In April 2013, all three vendors provided online demonstrations. Following these demonstrations and a review of the vendors' written responses to the RFI, SFMTA staff determined that the Intelx software would give the SFMTA the broad safety data management capabilities to allow the Agency to standardize our safety operations, promote accountability throughout the entire safety investigation process, and adapt as reporting requirements changed.

Phase I of the Project

On December 30, 2014, the SFMTA entered into a contract with Intelx Technologies (the Contractor) to plan and design an Agency-wide Safety Management Database System to include all reported incidents both transit and non-transit related. The contract did not require SFMTA Board approval because the contract amount of \$106,515 was within the Director of Transportation's contract delegation authority.

During Phase I of the project, the Contractor and the SFMTA conducted a needs assessment for the database and documented the results in a detailed Design Requirements document which serves as the basis for implementation of the database in Phase II. Based on this needs assessment, the database will be designed to include:

1. Five modules:
 - incidents management,
 - hazard management,
 - workers compensation management,
 - training management, and
 - non-conformance management.
2. Customized reporting forms; and
3. Migration of historical data from the existing database to the new database including SFMTA staff training history

Phase II of the Project

Under Phase II of the project, the Contractor will implement the new database by December 31, 2016.

Incident reports will be inputted into the new database electronically by the SFMTA staff, often while staff is in the field. The information will be accurate because forms will have “validation look-up tables” that employees can verify certain data for accuracy before entering. The information will be complete because most fields must be filled before a report can be submitted. The safety information will be comprehensive because the database will capture not only transit related incidents but also hazard incidents, employee workers’ compensation incidents, security and non-revenue vehicle incidents. In-depth analysis will be provided through the use of built-in analytical tools. Finally, configured dashboards will enable managers to have access to real-time knowledge of safety incidents.

Organizationally, the new database will standardize safety management so that safety reporting and tracking operates uniformly. It will encourage accountability with the use of email notifications that automatically sends alerts to employees about safety incident tasks and provide information to senior staff if tasks are unaddressed. It will enhance communication and sharing of safety data among transit supervisors, managers, safety professionals, trainers, and others. It will automate the investigation process and record data about incidents, near misses, unsafe conditions and actions, root causes, and causal factors that lead to workplace injuries for analysis and decision-making. It will record injuries and accidents on the job including where and why they happened. In addition to tracking safety data, the database will offer functionality to assign and manage corrective actions, conduct detailed accident investigations, record workplace injuries, track incident rates, analyze safety data to identify “safety hot spots” that need attention and report on key safety metrics and trends. The database will provide Agency-wide collaboration to implement ongoing safety improvements.

In addition, the Contractor will also provide ongoing maintenance and support for a term of four years after the database has been implemented. This support will include software updates, hotline support 24 hours a day, seven days a week and support through the Contractor’s Internet Exchange. The Contractor will also ensure database performance of 99.9%. The annual cost for software maintenance and support is \$154,265.

PUBLIC OUTREACH

There is no public outreach required for this contract.

ALTERNATIVES CONSIDERED

The SFMTA considered modifying the existing TransitSafe database to meet agency requirements. This approach was rejected because of the age of the database and the inability of the vendor to modify the database to meet all of the agency’s database requirements. A second alternative was considered to develop a new safety management database in-house. This was not pursued because SFMTA staff did not have the software designer expertise required to develop the software and in-house resources were already dedicated to other priority projects.

FUNDING IMPACT

Total funding of \$1,391,199 for the project comes from the System Safety Division’s operating budget for FY 2016, 2017, and 2018.

Fiscal Year	Operating Budget \$
2016	\$774,139
2017	\$154,265
2018	\$154,265
2019	\$154,265
2020	\$154,265
Total	\$1,391,199

ENVIRONMENTAL REVIEW

On November 12, 2015, the Planning Department concurred with the Municipal Transportation Agency’s determination that the proposed safety management database is not a “project” for purposes of environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c).

The Planning Department’s concurrence is on file with the Secretary to the SFMTA Board of Directors.

The City Attorney has reviewed this calendar item.

RECOMMENDATION

Authorizing the Director of Transportation to execute SFMTA Contract No. SFMTA 2016/29 with Intelix Technologies, Inc. for professional software and configuration services to implement an SFMTA Safety Management Database, for a total not-to-exceed amount of \$1,391,199 and a term of five years effective January 1, 2016.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA currently uses TransitSafe Safety Management Database, implemented in 2005, to track training, corrective actions, incidents, audits, and generate regulatory reports; and

WHEREAS, Because the existing database does not enable the SFMTA to effectively manage all safety incidents, the SFMTA sought to replace the existing database with a comprehensive safety management software and database that enables the agency to track multiple functions under one system, with emphasis on eliminating paper reports and utilizing electronic data entry forms; and

WHEREAS, On March 30, 2013, the SFMTA issued a Request for Information to software vendors seeking safety management software system information and requesting software demonstrations to determine whether their software product capabilities met the SFMTA's needs; and

WHEREAS, Of the three vendors who responded to the Request for Information, SFMTA staff determined that only one, Intelx Technologies, Inc., met the SFMTA's needs; and

WHEREAS, On December 30, 2014, SFMTA executed a contract with Intelx Technologies, Inc. to plan and design a Safety Management Database System to replace the existing System; and

WHEREAS, This Agreement did not require SFMTA Board approval since the contract amount was within the Director of Transportation's authority to approve; and,

WHEREAS, During Phase I of the project, Intelx Technologies, Inc. and SFMTA conducted a needs assessment for the database and documented the results in a detailed Design Requirements document which serves as the basis for implementation of the database in Phase II; and,

WHEREAS, The SFMTA and Contractor wish to now enter into an Agreement to implement the new database by December 31, 2016, and all requirements for this new database will be formalized by both the SFMTA and the contractor in a Specifications Document; and

WHEREAS, On November 12, 2015, the Planning Department concurred with the Municipal Transportation Agency's determination that the proposed safety management database does not constitute a "project" for purposes of environment review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c); now therefore be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute SFMTA Contract No. SFMTA 2016/29 with Intelx Technologies, Inc. for professional software and configuration services to implement the new Safety Management Database System, for a total not-to-exceed amount of \$1,391,199 and a term of five years effective January 1, 2016.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 1, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and
InteleX Technologies Inc. for Safety Management Software and Configuration Services**

Contract No. SFMTA-2016/29

This Agreement for Safety Management Software and Configuration Services (“Agreement”) is dated for convenience as January 1, 2016, entered in the City and County of San Francisco, State of California, by and between: InteleX Technologies Inc., 905 King Street West, M6k 3G9, Toronto, Canada (“Contractor”), hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

WHEREAS, the SFMTA (“Department”) wishes to obtain Safety Management Software and Configuration Services; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, Contractor performed Phase I of the Project under Contract No. SFMTA-2011/12-31; and

WHEREAS, Contractor will perform Phase II and provide software support and maintenance under Contract No. 2016/29; and

Now, THEREFORE, the parties agree as follows:

I. DEFINITIONS

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Acceptance

Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation or City’s deemed acceptance of the Licensed Software Application. City’s Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 7.

Acceptance Testing Period	The period allocated by City to test the Licensed Software and Services, as set forth in Section 7, to determine whether they materially conform to the applicable Specifications, and if appropriate, properly operate in the defined operating environment and are capable of running on a repetitive basis.
Agreement	This document and any attached appendices and exhibits, including any future written and executed amendments.
City System	A copy of the Licensed Software Applications installed on the City Server that provides the City a duplicate system to provide the City secondary access to and maintenance of the City Data, as provided for this Agreement.
City Data	The confidential information entered to the License Software Application that is to be maintained and reported by the Licensed Software Application as provided in this Agreement.
City Server	The server and related hardware and supporting software including but not limited to operating systems and databases needed to use the Licensed Software Application installed and maintained by the City at a City location on which the City System is installed and run.
Day(s)	Unless otherwise indicated, a “day” (irrespective of capitalization) means a calendar day. In the plural, days means consecutive calendar days.
Deliverable	Means any enhancements, configuration, work product or other deliverable produced by Contractor pursuant to the Services provided hereunder as further described in Appendix A.
Documentation	The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.

Disabling Code	Computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the City's access to the Licensed Software Application through the City's Website and/or End User's processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.
End User	A person authorized by City to access the Website and utilize the Licensed Software application.
Hardware	The physical parts of computers, servers, networking equipment, peripherals, and related devices necessary to host, modify, and run software.
Licensed Software Application	The software listed in Section I of Appendix A and resident on Contractor's servers located at Contractor's Hosting Provider facilities, and that may be accessed by End Users through the Internet. Includes all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form.
Major Release	A Licensed Software Application release that makes significant improvements in the functionality or performance of the Licensed Software Application. Typically, for a software product, the first number to the left of the decimal shows a Major Release in the numerical designation thereof.
Phase I	The Phase of the Project consisting of SFMTA needs assessment that was completed under Contract No. SFMTA-2011/12-31.
Phase II	The Phase of the Project consisting of System configuration and implementation, testing and training, Project acceptance and closeout.
Project	The provision of the services under Phase I which has been completed and the implementation of the System under Phase II.

Services	The provision of the services to be performed by the Contractor as described in Section II of Appendix A, "Licenses and Services to be Provided by Contractor" and Contractor Statement of Work listed for the applicable Phase.
Specifications	The functional and operational characteristics of the Licensed Software Application as described in this Agreement and Contractor's published product descriptions and technical manuals current as of the effective date of this Agreement.
System	The software and database configuration the Contractor is required to provide under this Agreement.
Website	The Contractor's collection of interlined Web pages with the intended starting file called a "home page," that provides End User Access to the City to access and use the Licensed Software Application.

II. PROJECT SUMMARY AND OVERVIEW

A. Overview

The SFMTA seeks to replace its existing safety and incident reporting system and software. The replacement System was planned and designed under Phase I of Agreement SFMTA-2011/12-31. The replacement System will be implemented, tested, and staff trained in its use in Phase II subject to this Agreement. The Phase II software configuration requirements were developed in Phase I. The work and compensation for the work to be performed under Phase II is outlined in Appendix A "Services to be Provided by Contractor" and Appendix B "Calculation of Charges" to this Agreement. Phase II work is contracted through this Agreement. In addition, the software maintenance and support the Contractor will provide is outlined in Appendix C "Software Maintenance and Support Attachment."

III. TERMS AND CONDITIONS OF AGREEMENT

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement. Subject to Section 1, the term for this Agreement for Phase II shall be from January 1, 2016 to December 31, 2021.

3. Effective Date of Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform. During the Term of this Agreement, Contractor will perform all of the Services described in this Agreement below and in Appendices A and C:

a. The Contractor agrees to perform the services provided for in Appendix A, "Services to be Provided by Contractor" and Appendix C, "Software Maintenance and Support Attachment" attached hereto and incorporated by reference as though fully set forth herein.

b. Provide all hardware, software and other equipment at the Contractor or Subcontractor's hosting site(s) as necessary to host and deliver the Licensed Software Application.

c. Provide End User access to the Licensed Software Application pursuant to the license grant in Section 6.

d. Comply with the Service Level Metrics and Performance Guarantees described in Appendix A-1. It is mutually agreed and understood, that the Service Level Metrics and Performance Guarantees will be applied beginning on the first full calendar month following the Acceptance of the Services.

e. Maintain the correct operation of the Licensed Software Application, Contractor's Website, and provide maintenance and support services.

f. Provide the License Software Application in an agreed machine readable format for installation and use the City on the City Server as an alternate server if Contractor's server is not available and not as a separate production instance.

g. Provide telephone and online support for System Administrator users in the operation of the Licensed Software Application as defined in the Software Support and Maintenance Agreement.

h. Provide Disaster Recovery Services as described in Section 23(d).

5. City's Responsibilities. During the Term of this Agreement, City shall:

a. Manage the identity and user access profiles of City End Users permitted access to the Licensed Software Application.

b. Provide and maintain the City Server and the City System.

6. License.

a. License Grant. Contractor hereby grants to City, a non-transferable, non-exclusive, worldwide perpetual license to use, display, and execute the Licensed Software Application on a single production instance and a single test instance on the Website and the City Server. Contractor will provide City with commercially reasonable assistance to ensure that the Licensed Software Application and the City Data installed on the City Server duplicates the Licensed Software Application and City Data installed on the Website.

b. Click-Wrap Disclaimer. No 'click to accept' agreement that may be required for the End Users access to the Licensed Software Application or Contractor's Website and no 'terms of use' or 'privacy policy' referenced therein or conditioned for use of the Licensed Software Application or Contractor's Website shall apply. Only the provisions of this Agreement shall

apply to End Users for access thereto and use thereof. The Parties acknowledge that each End User may be required to click "Accept" as a condition of access to the City's Website, but the provisions of such 'click to accept' agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for each such End User. The terms and conditions of this Agreement shall have precedence over and conflicting term or condition stated in any appendix to this Agreement and to any maintenance or services agreement related to the services and License Software Application provided to the City under this Agreement.

c. Licensed Software Application Title. City acknowledges that title to each Licensed Software Application shall at all times remain with Contractor, and that City has no rights in the Licensed Software Application except those expressly granted by this Agreement. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within any Licensed Software Application or any related materials or Documentation by Contractor.

d. Updates. Contractor shall provide the City regular updates of the Licensed Software Application via access to an FTP site to update, maintain and support the Licensed Software Application and City Data stored on the City Server. City will be responsible for applying these updates to the Licensed Software Application on the City Server. Contractor will provide services for maintaining or supporting the Licensed Software Application and City Data on the City Server at an additional fee for professional services at the then current service rates.

e. Source Code. Contractor agrees to provide City with a current copy of the Contractor's most recent source code version for the Licensed Application (Support Source Code), through the escrow agent as described in this paragraph in the event that (a) Contractor is liquidated or dissolved, provided such liquidation or dissolution is not in connection with the sale of all or substantially all of the related software assets or stock of Contractor to a successor entity in a merger or acquisition, or (b) Contractor generally discontinues support for a particular Licensed Application product currently supported and licensed to City under this Software License and Hosting Agreement, and City is current on applicable annual fees, provided such Licensed Software Product is not continued by another entity or a replacement product which substantially performs the same function is not available from Contractor. Contractor source code shall be held by an escrow service. Contractor shall provide a business contact name and number for the escrow services company. City shall be entitled to become, and shall remain, a party to such escrow, for so long as City uses any Software from Contractor hereunder Contractor shall cause its escrow agent to add City as a beneficiary upon written notice by City to the escrow agent, and confirmation by the escrow agent, that Contractor ceases to be a going concern, including obtaining all applicable public filings and documents thereto, unless determined otherwise. If it is determined that Contractor ceases to be a going concern and City is in good standing with the terms and conditions set out herein, including payment of annual Maintenance and Support, escrow agent shall release the Contractor source code to City. City shall have a fully-paid license to utilize the source code solely to support the Licensed System and Software.

f. Authorized APIs. City shall also be permitted to access and use Contractor's Application Program Interfaces (API's) on a daily basis and develop and modify macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Any such macros or user interfaces developed by the City shall become the property of the City.

7. Acceptance; Document Delivery; Trainings.

a. Acceptance Testing. City shall have a period of sixty (60) calendar days ("Acceptance Testing Period") from the mutually agreed upon start date that the licensed software application is ready for acceptance testing to verify that the Licensed Software Application substantially conforms to the specifications contained in the Documentation,

Appendix A hereof and any applicable Statement of Work (“Acceptance Criteria”). In the event that the City determines that the Licensed Software Application does not substantially conform to the Acceptance Criteria, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software Application, as applicable, so that it satisfies the above Acceptance Criteria. Contractor shall within a period not to exceed thirty (30) calendar days, correct such problems or deficiencies identified by City during the Acceptance period at no additional charge to City. Upon the correction of such deficiencies, City shall have a subsequent thirty (30) calendar days Acceptance Testing Period within which to test the Licensed Software Application and Services. Such testing shall be limited to the testing of the corrections supplied by Contractor and any additional issues resulting from the correction of the issues. If the City fails to notify the Contractor in writing that Licensed Software Application does not materially conform to any Acceptance Criteria, in any Acceptance Testing Period, the City will be deemed to have accepted the Licensed Software Application on the expiration of that Acceptance Testing Period. Provided that the Contractor requests in writing to the City an email approval of the Licensed Software Application prior to the Acceptance Testing Period end and the City still does not respond in writing within the Acceptance Testing Period that the Licensed Software Application has either (i) been accepted or (ii) does not materially conform to the Acceptance Criteria. The Acceptance will be the date upon which City (i) provides Contractor with written notice of satisfactory completion of Acceptance testing and acceptance of the Licensed Software Application or (ii) is deemed to have accepted the Licensed Software Application. If Acceptance has still not occurred, then City may notify Contractor after the Acceptance Testing Period that the Licensed Software Application and /or Services do not meet the criteria of this Section and City shall be entitled to terminate this Agreement in accordance with the procedure specified in Section 26(b) herein.

b. Document Delivery. Contractor will deliver completed Documentation in electronic format for the Licensed Software Product in accordance with the Documentation of Appendix A (Licenses and Services to be Provided by Contractor). The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

c. Trainings. Contractor will provide a total of thirteen (13) System Administration Training sessions. Contractor will provide a total of seven (7) “train-the-trainer” approach trainings offsite and twelve (12) train-the-trainer training sessions on-site to SFMTA Employees in the use of the Licensed Software Application, per the applicable statement of work. Contractor will also provide training materials for reference in electronic format.

8. Warranties of Contractor.

a. Compliance With Description of Services. Contractor represents and warrants that the Licensed Software Application specified in this Agreement and all updates and improvements to the Licensed Software Application will comply in all material respects with the specifications and representations specified in Appendix A or any Statements of Work (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) or set forth (i) herein or in any amendment hereto, and (ii) the Service specifications including updates thereto.

b. Title. Contractor represents and warrants to City that it is the lawful owner or licensee of all programs, materials and property used by it in the performance of the Services contemplated hereunder and has the right to permit City access to or use of the Licensed Software Application and each component thereof.

c. Disabling Code. Contractor represents and warrants that it will use commercially reasonable efforts to ensure that the Services, Licensed Software Application, and any information, reports or other materials provided to End Users as a result of the operation of the Services, including future enhancements and modifications thereto made by Contractor, shall be free of any Disabling Code at the time of their receipt by End Users.

d. EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT AND SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, CONTRACTOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE APPLICATION OR SERVICE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND OR FITNESS FOR A PARTICULAR PURPOSE.

9. Compensation. Compensation for Phase II work and software maintenance and support shall be made as provided in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall the amount of this Agreement exceed One million, three hundred ninety one thousand one hundred and ninety nine dollars (\$1,391,199.) No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Work under Milestones, required under this Agreement are received from Contractor and approved by SFMTA in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement, provided that withheld payment is equitable or proportionate to Contractor's failed obligation. In no event shall City be liable for interest or late charges for any late payments.

10. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

11. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

12. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

13. Disallowance. If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's

request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

14. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

15. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay prior to the date of Acceptance.

16. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

17. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any

of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

18. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

19. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness as required by the California Labor Code, and Employer's Practice Liability insurance with limits not less than \$1,000,000 for each claim; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and including Non-Owned Automobile coverage with limit not less than \$1,000,000 each occurrence; and

3) Technology Errors and Omissions Liability. Contractor shall obtain and maintain throughout the duration of the contract technology errors and omissions liability coverage with limits of \$10,000,000 per occurrence/loss, and \$10,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, stored or transmitted in electronic form.

(b) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation Contractor shall fully indemnify the City for any claim brought by any employee of Contractor alleging injury incurred in the course of and arising out of the employee's services rendered in performance of this Agreement. Said indemnity shall cover all species of benefits provided under the California Labor Code to an injured worker, including but not limited to medical care, medical and vocational rehabilitation, temporary disability, permanent disability, and statutory penalties.

d. Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss or claim brought under a theory of tort, contract, or workers' compensation liability. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation and Employer's Liability policy/ies shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

e. All policies shall provide thirty days' advance written notice to the City of reduction of coverages or cancellation of coverages for any reason. Contractor shall provide City thirty days' advance written notice of nonrenewal of any policy. Notices shall be sent to the City address in the "Notices to the Parties" section.

f. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If

insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

20. Indemnification.

a. General Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor, arising from Contractor's performance of this Agreement, except as otherwise expressly limited in this Agreement. Said indemnity shall include but is not limited to, Contractor's use of facilities or equipment provided by City or others. The foregoing indemnity shall include, without limitation, reasonable and demonstrable fees of attorneys, consultants and experts and related costs and City's reasonable and demonstrable costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. The City will cooperate and provide reasonable assistance and information that it possesses necessary for Contractor to defend a claim or action for which the City seeks defense and indemnity. If Contractor accepts tender of defense and indemnity of a claim or action, the City agrees to release control of said claim or action to Contractor, including but not limited to terms of settlement, to the extent that any litigation, resolution or settlement of said claim or action does not obligate the City.

b. Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software Application infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed Software Application constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event a final injunction is obtained against City's use of the Licensed Software Application by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software Application is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed Software Application as contemplated hereunder, (b) replace the Licensed Software Application with a

non-infringing, functionally equivalent substitute Licensed Software Application, or (c) suitably modify the Licensed Software Application to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software Application. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing Licensed Software Application depreciated on a straight-line basis over a useful life term of seven (7) years. Any unauthorized modification or attempted modification of the Licensed Software Application by City or any failure by City to implement any improvements or updates to the Licensed Software Application, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the Licensed Software Application with products or data of the type for which the Licensed Software Application was neither designed nor intended to be used.

21. Incidental and Consequential Damages. Regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, resulting in whole or in part from the performance of or arising out of or in connection with this Agreement or the services performed in connection with this Agreement, neither party shall be responsible for incidental and consequential damages resulting in whole or in part from the performance of this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any rights to other damages that the parties may have under applicable law.

22. Liability of City and Contractor.

a. City's payment obligations under this agreement shall be limited to the payment of the compensation provided for in Section 9 (Compensation) of this Agreement. Notwithstanding any other provision of this Agreement.

b. Except for Contractor's defense and indemnification obligations as provided in Section 20 of this Agreement, and except for claims arising from the Contractor's willful misconduct, gross negligence, fraud or false claims and other willful violations of statute, Contractor's total liability to the City (including any liability for the acts and omissions of its employees, agents or subcontractors), in contract or tort, arising out of or related to this agreement shall not exceed the compensation as provided for in section 9 (Compensation) of this Agreement actually paid by the City.

c. Notwithstanding the foregoing, Contractor's total liability to the City arising in connection with a breach of confidentiality or breach of data related to Contractor's failure to perform its duties pursuant to section 29 of this Agreement shall not exceed five million dollars (\$5,000,000.00).

d. The aforesaid limits on Contractor's liability to the City shall not apply to Contractor's liability to third parties or Contractor's obligation to defend and indemnify claims and actions brought by third parties against the City, as described in Section 20 of this Agreement.

23. Force Majeure.

a. Liability. No Party shall be liable for any default or delay in the performance of its obligations under this Agreement: (i) if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"), (ii) provided the non-performing Party is without fault in causing reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use

of alternate sources, workaround plans or other means (including, with respect to Contractor, by meeting its obligation for performing disaster recovery services as described in Section 23(d)).

b. Duration. In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall notify the Party to whom performance is due, as soon as practicable, by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

c. Effect. If any event under Section 24(a), above substantially prevents, hinders, or delays performance of the Services as critical for more than fifteen (15) consecutive days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor, provided City pays Contractor for all Services performed until the date of termination. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than twenty (20) days.

d. Disaster Recovery. In the event of a disaster, as defined below, Contractor will be responsible for providing disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Exhibit 2. Notwithstanding Section 24(a), a Force Majeure Event shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor fails to restore the hosting services within seven business days of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the Licensed Software Application hosting services for any reason that could be remedied by relocating the Licensed Software Application hosting services to a different physical location outside the proximity of its primary data center.

24. Liquidated Damages. Deleted by agreement of the Parties.

25. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- 12. Submitting False Claims; Monetary Penalties.
- 14. Taxes
- 19. Insurance
- 29. Proprietary or confidential information of City
- 35. Assignment
- 41. Alcohol and Drug-Free Workplace
- 56. Compliance with laws
- 60. Protection of private information

2) Contractor fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

5) On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement.

6) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

26. Termination

a. Basis for Termination by Contractor. Contractor shall have the right to terminate this Agreement (i) if City is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of ninety (90) days after the last day payment is due; provided, however, that written notice is given to City by Contractor of the expiration date of the ninety-day (90) delinquency period at least ten (10) days prior to the expiration date or, (ii) if City commits any other breach of this Agreement and fails to remedy such breach within thirty (30) days after receipt of written notice by Contractor of such breach.

b. Basis for Termination by City. City shall have the right, without further obligation or liability to Contractor: (i) to immediately terminate this Agreement if Contractor commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach; or (ii) to terminate this Agreement upon thirty (30) days prior written notice for City's convenience and without cause, provided that except for termination due to an uncured breach as set forth in this Section and in the event of Infringement, City shall not be entitled to a refund of any amounts previously paid under this Agreement.

c. Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor thirty (30) days prior written notice of termination. The notice shall specify the date on which termination shall become effective. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

3) Terminating all existing orders and subcontracts.

4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated, if permitted by such order or subcontract. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts, provided that any such payment or settlement does not create an obligation or liability for Contractor.

5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts. City will compensate Contractor for such settled liabilities and claims.

6) Completing performance of any services or work reasonable in nature and quantity that City designates to be completed prior to the date of termination specified by City.

7) Taking such reasonable action as may be necessary, or as the City may reasonably direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

d. Invoice. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

1) The reasonable fee to City, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment.

e. Limitation of Liability. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

f. Offsets. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

g. Survival of Payment Obligation. City's payment obligation under this Section shall survive termination of this Agreement.

h. Disposition of Data. Upon any termination of this Agreement, Contractor may discontinue hosting the Licensed Software Application on the Contractor's Hosted Server on the Website on a mutually agreed upon date and City shall afterward cease accessing the Licensed Software Application, provided that City pays for Support, Maintenance and Hosting Services until such time that City ceases to access the Licensed Software Application on the Website. Upon expiration or termination of this Agreement, Contractor shall within five (5) business days return City's Data in a .bak format compatible with SQL Server 2008 or newer. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to

City, Contractor shall within thirty (30) days purge all City Data from its hosted servers and provide City with written certification that such purge occurred. Contractor shall not be required to erase Data that may be retained on back-up systems until such time as the back-up system has cycled through its standard procedures for removal of data. Such data transfer shall be done at no cost to the City, except for costs arising from the Contractor's services associated with such data transfer. If City elects to use other hosting options, including on-premise hosting and hosting by other third parties, Contractor will co-operate with and assist the City in the transition to ensure uninterrupted access to City's Data, provided that Contractor has not terminated the Agreement pursuant to section 26(a) (Basis of Termination) by Contractor, and provided that City pays all fees for services associated with such assistance,.

27. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

12. Submitting false claims
13. Disallowance
14. Taxes
Payment does not imply acceptance of work
17. Responsibility for equipment
18. Independent Contractor; Payment of Taxes and Other Expenses
19. Insurance
20. Indemnification
21. Incidental and Consequential Damages
22. Liability
29. Proprietary or confidential information of City
31. Ownership of Results
32. Works for Hire
33. Audit and Inspection of Records
51. Modification of Agreement.
52. Administrative Remedy for Agreement Interpretation.
53. Agreement Made in California; Venue
54. Construction
55. Entire Agreement
59. Severability
60. Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Provided that Contractor has not terminated this Agreement pursuant to section 26(a), Contractor shall license to City as per Section 6(a), and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this

Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

28. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

29. Proprietary or Confidential Information.

a. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor will have access to private or confidential information that is owned or controlled by City and that contains proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor agrees that City has full ownership of all data stored on Contractor's hosted servers. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

b. Nondisclosure. The receiving Party of proprietary or Confidential Information agrees and acknowledges that it shall have no proprietary interest in the Confidential Information and will not disclose, communicate nor publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the disclosing Party, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party. The receiving Party shall take all necessary steps to ensure that the Confidential Information is securely maintained. The receiving Party's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event the receiving Party becomes legally compelled to disclose any of the Confidential Information, it shall provide the disclosing Party with prompt notice thereof (said period not to exceed 48 hours from Contractor's knowledge), provided that such notice is permitted by law, and shall not divulge any information until the disclosing Party has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information which it is legally required to disclose.

c. Data Security. Contractor shall at all times during the Term provide and maintain current security with respect to (a) the Services, (c) Contractor's access to Contractor's Hosted Server, to prevent unauthorized access or "hacking" of City's Confidential Information and City's hosted Data. Contractor shall ensure Contractor's Hosted Server provide security for its networks and all internet connections consistent with best practices observed by well-managed workings in the hosting industry, and Customer will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's Confidential Information to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion detection or similar barriers) and password protected access to the City's Confidential Information and hosted Data. For information disclosed in written form, Contractor agrees that appropriate safeguards will be in place for the secured storage of City's Confidential Information. Contractor also will

establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the City's Confidential Information and hosted Data from unwarranted disclosure.

d. Loss or Unauthorized Access to City's Data. Contractor will promptly notify City of any actual or potential exposure or misappropriation of City's Data (any "Leak") that comes to Contractor's attention. Contractor shall be responsible for any and all Leaks of City's Data. Contractor will reasonably cooperate with City and with law enforcement authorities in investigating any such Leak, at Contractor's expense. Contractor will likewise reasonably cooperate with City and with law enforcement agencies in any effort to notify injured or potentially injured parties. Contractor will reasonably cooperate with City on all media inquiries involving Leaks of City's Data. The remedies and obligations set forth in this Subsection 29(d) are in addition to any other City may have.

e. City's Data Backup. Contractor agrees to store all of City's Data on Contractor's Hosted Server primary server and back-up servers located only in the United States. Contractor will: (i) execute incremental database backups to a backup server every twenty-four (24) hours, (ii) conduct weekly full backups, and (iii) will store encrypted, weekly tape backups at a secure off-site location (i.e., other than the primary data center); and (iv) will, on request, after 12-18 month periods, provide City with copies of the City's Data on a media in standard industry format. Additionally, Contractor shall assist City, as requested, to provide a data backup of all the Content and Transactional Information, in a bak format compatible with SQL Server 2008 or newer, to the City on a monthly basis. Contractor agrees not to destroy any of City's Data without written authorization. City agrees that City will be responsible for restoring such data backups provided by Contractor on the City Back Up System. Any assistance provided by Contractor for restoring such data backup to the City Back Up System will be provided on a time and material basis at Contractor's then current professional rates.

f. City's Ownership Rights to Data: The data that the City inputs, manipulates, compiles and stores on or through the Licensed Software ("City Data") is the property of the City and Contractor shall have no claim whatsoever on that Data and shall not use the City Data for any purpose other than provided in this Agreement.

g. City Data Retrieval. City shall at all times have access and control of its Data and shall be able to retrieve it in a readable format from the Website, in electronic form on a monthly basis and shall be able to view, edit and delete the Data and/or print, at any time, at no additional cost, provided that such retrieval, viewing, editing and deleting does not involve Contractor personnel. Contractor shall ensure that the FTP is accessible whenever the SFMTA seeks to download data to the City Server. Contractor shall ensure that the data accessed through the FTP is readable and not corrupt.

30. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Robin Courtney (SFMTA)
Manager, System Safety Administration
System Safety Division
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
(415) 701-5694
Robin.Courtney@sfmta.com

To Contractor: Ghazal Parvez
Chief Financial Officer
905 King Street West, M6K 3G9

Toronto, Ontario, Canada
Ghazala.parvez@intele.com

Any notice of default must be sent by registered mail.

31. Ownership of Results. The City shall own as a work for hire all deliverables produced by Contractor under Phase I of this Agreement, including but not limited to reports, recommendations, analyses, configuration plans other work product that is not specifically related to software proprietary to Contractor. All ownership to the Licensed Software Application and outcomes of the Services, including any custom programming and system configuration developed for the City in conjunction with the Licensed Software Application that are unique to the City's requirements, but excluding any City Data, shall remain with Contractor. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with Services to be performed under this Agreement, shall be perpetually licensed on a non-transferable, non-exclusive basis to City so as to allow City to use the Licensed Software Application as per the terms of this Agreement.

32. Works for Hire. Deleted by Agreement of the Parties.

33. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement, such audits and related activities to be at City's sole expense. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

34. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Any changes of subcontractors will require notification of City in writing thirty (30) days in advance of change in subcontractors. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Contractor is responsible for all subcontractors.

35. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Notwithstanding the foregoing, Contractor may assign this Agreement to any successor to Contractor (including but not limited to, by way of merger consolidation or sale of all or substantially all of Contractor's stock or assets or the division responsible for the Licensed Software Application) without the City's consent, provided that Contractor provides City with notice of such assignment and City retains the right to terminate this Agreement at no cost prior to or following such assignment.

36. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

37. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance. Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Contractor’s obligations or liabilities, or materially diminish Contractor’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor’s obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Contract Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of CMD”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. (This subsection 37.b shall be applicable to Phase II only if LBE subcontracting is required under the Contract Modification authorizing Phase II.)

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

38. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts. Contractor shall incorporate by reference in all subcontracts for professional services on City’s physical location the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing)

and shall require all such subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. City agrees that that at the time of signing this Agreement, such approval has been secured.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

39. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

40. Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

41. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5, while performing professional services on City's site will be deemed a material breach of contract.

42. Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

43. Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

44. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

45. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

46. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's

obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

47. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, or the equivalent legislation pertinent to location of Contractor's personnel's residency, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO, or the equivalent legislation pertinent to the Contractor's personnel's residency. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, or does not employ anyone in the City's jurisdiction, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO, or equivalent legislation pertinent to the Contractor's personnel's residency shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating this section, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in the appropriate legislation. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor for professional services to be performed on City's site shall require the Subcontractor to comply with the requirements of the HCAO or equivalent applicable legislation, and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO or equivalent applicable legislation and has imposed the requirements of the HCAO or equivalent applicable legislation on Subcontractor through the Subcontract. Each Contractor shall be responsible for such Subcontractors' compliance with this Chapter. If such Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO or equivalent applicable legislation, for opposing any practice proscribed by the HCAO or equivalent applicable legislation, for participating in proceedings related to the HCAO or equivalent applicable legislation, or for seeking to assert or enforce any rights under the HCAO or equivalent applicable legislation by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the laws applicable in the jurisdiction of employment by Contractor.

h. Contractor shall keep itself informed of the current requirements of the HCAO relevant to Contractor operations

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO or the equivalent legislation pertinent to location of Contractor's personnel's residency.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO or the equivalent legislation pertinent to location of Contractor's personnel's residency. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

48. First Source Hiring Program

This Section Left Blank by Agreement of the Parties.

49. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

50. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

51. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

52. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

53. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

54. Entire Agreement. This Contract and its Appendix A and B, along with any documents incorporated by reference, sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions, including the expired contract SFMTA-2011/12-31. This contract may be modified only as provided in Section 50, "Modification of Agreement."

55. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any reasonable manner that apply to and that affect the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

56. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

57. SSAE 16, SOC 2 Audit Report. During the Term of the Agreement, Contractor will provide, on City's request, on an annual basis, the SSAE 16, Soc 2 Audit report ("Audit Reports") it receives from its hosting service provider..

58. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

59. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter, as it applies to the performance of this Agreement, shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

60. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

61. Approval by Counterparts.

This Agreement may be executed by one or more counterpart signature pages delivered by mail, courier or e-mail (PDF), all of which taken together shall represent approval of all parties to the Agreement and shall constitute but one and the same instrument.

62. Included Appendices

The following documents are incorporated to the Agreement by reference as if fully set out herein:

- A: Services to be Provided by Contractor
- B: Calculation of Charges
- C: Software Maintenance and Support Attachment

63. Reference Documents - Exhibits

The following documents are included here for reference and information purposes only and do not create or imply any obligation on the part of the City:

- 1: Rackspace Hosting Documentation
- 2: Disaster Recovery Plan
- 3: Data Security Policy

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Approved by:

Intelix Technologies Inc.

Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation
Agency

By signing this Agreement, I certify that I
comply with the requirements of the
Minimum Compensation Ordinance, which
entitle Covered Employees to certain
minimum hourly wages and compensated and
uncompensated time off.

Approved as to Form:

I have read and understood paragraph 40, the
City's statement urging companies doing
business in Northern Ireland to move towards
resolving employment inequities,
encouraging compliance with the MacBride
Principles, and urging
San Francisco companies to do business with
corporations that abide by the MacBride
Principles.

Dennis J. Herrera
City Attorney

By:

John I. Kennedy
Deputy City Attorney

Ghazala Parvez
Chief Financial Officer
Intelix Technologies Inc.

AUTHORIZED BY:

City vendor number: 92927

MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS

Resolution No: _____

Adopted: _____

Attest: _____

Roberta Boomer, Secretary
SFMTA Board of Directors

Appendix A

Services to be provided by Contractor

I. Overview of Contractor's Software Application and Services

The Contractor shall configure its software application services to deploy a web-based Safety Management Database (the "System") for managing various SFMTA incidents.

As part of these services, Contractor shall provide the following software application and services:

1. The application will be the Contractor's proprietary software.
2. The design and configuration shall be in accordance with the Design Requirements Document developed and approved by SFMTA under Contract No. SFMTA-2011/12-31 and the Specifications Document to be developed and approved by SFMTA under this Contract No. SFMTA-2016/29.
3. The licensed software shall be housed and hosted off-site by the Contractor through an approved third party provider Subcontractor and available to the SFMTA via an online connection. This type of remote housing is referred to as a cloud based solution.
4. The software licenses shall be perpetual.
5. The perpetual software user licenses shall total 125.
6. Through the System's Reporting Tool, SFMTA shall be able to extract data to .XLS and .CSV format files.
7. The Contractor shall provide software documentation in electronic format.
8. Software documentation includes:
 - Technical documentation
 - Data diagrams
 - Workflow documentation
9. Within the Term of the Agreement, SFMTA may, upon prior written notice to Contractor, purchase additional software licenses at same price.
10. Annual support and maintenance will begin on January 1, 2017.
11. The Contractor shall use commercially reasonable efforts to implement the application within fifty-two (52) weeks in compliance with the mutually agreed upon Specifications Document.

12. The Contractor shall provide introductory training to SFMTA on the pre-configured System applications.
13. The Contractor shall configure and deploy the following applications:
 - Incidents Management
 - Non-conformance Management
 - Hazard Management
 - Workers Compensation Management
 - Training Management
14. The Contractor shall require a change order to configure the Audits Management application which will be reflected as a modification to this Agreement.
15. Within the Incidents Management module, the Contractor shall configure and deploy the following forms:
 - Transit Operator form
 - Inspector form
 - Miscellaneous form
 - Blind Claims form
 - Station Agent form
 - Security form
 - Master Transit Safety Incident form
 - Cause Analysis form
 - Non-revenue vehicle form
16. Within the Incidents Management module, the contractor shall configure and deploy the following table:
 - Routes
17. Within the Incidents Management, Non-Conformance, and Hazards Management modules, the contractor shall configure and deploy the ability for users to create corrective action plans for incidents, hazards, safety inspections, and security activities.
18. The Contractor shall configure the System to migrate historical data for:
 - Routes
 - Location Intersection
 - Location Structure
 - Training Courses
 - Training History (Including Employee Training History)
 - Data Import Tool Training and Support – Historical Incident Data

19. The Contractor shall provide training and support to SFMTA on the use of its data import tool so that SFMTA can manage updates to the following tables of information after the initial upload:
 - Incidents – Operator, Supervisor, System Safety, Security
 - Employee Incident History
 - Hazards
 - Corrective Actions
 - Training Sessions – All the instances of course when held
20. The Contractor shall configure the System with third party system connections to:
 - Human Resources Database Interface (HRDB)
 - Vehicles Import Interface
 - Single Sign-On
21. The Contractor shall conduct Quality Assurance testing on the fully-configured System and provide SFMTA with the test cases and final results.
22. The Contractor shall conduct pre-configuration activities to plan and gather information:
 - Kick-off Meeting – provide Schedule with detailed plan and timeline
 - Design Workshop – finalize design and functional requirements
 - SFMTA Project Team training on pre-configured applications
23. The final design and functional requirements will be documented in a Specification Document to be approved by SFMTA.
24. The Contractor shall train employees selected by SFMTA to be able to act as trainers for the rest of the SFMTA users.
25. The Contractor shall develop customized reference guides for each of the following
 - Incident Management Forms
 - Transit Operator Form
 - Inspector Report Form
 - Miscellaneous Report Form
 - Blind Claim Form
 - Station Agent Form
 - Security Incident Form
 - Master Transit Safety Incident Form
 - Cause Analysis Form
 - Non-Revenue Vehicles Form
 - Workers Compensation
 - Non-conformance Management Form
 - Hazards Management Form
 - Audit Management Form

- Training Management Form

II. Intelex Database System Features

The Contractor shall configure the System as agreed to in the Design Requirements Document and the Specifications Document. The following are general System platform features of the product:

1. Online submittal of reports

The System shall enable users to securely access the entire web-based system from anywhere in the world across Internet-compatible mobile devices (e.g. iPad, iPhone, Android, etc.), and with any widely used browser (e.g. Chrome, Firefox, Internet Explorer, etc.) on Windows, Mac OS X and other operating system. Such devices and operating systems are supported as per the Intelex Product documentation.

2. Email notifications

The System shall have email notifications that automate the process of alerting key personnel of status updates, due dates, or changes in corrective action plans and that ascend the chain of command if requirements are not fulfilled. Notifications can be scheduled in advance or triggered by overdue activities.

3. Workflows

The System shall have workflows that reflect the organizational structure of the Agency and follow a task to the completion. SFMTA System Administrators can adjust the workflows directly through the user interface to reflect evolving organizational changes.

4. Customized dashboards and scorecards

The System shall have dashboard and scorecard features. Dashboards will enable users to create and display real-time performance metrics in a clear and concise format configured based on who will be using them and what information needs to be available to that user. Dashboards can be created for specific job roles, areas of management, organizational levels, divisions, or for any other purpose needed. Dashboards can be created to illustrate performance data in a variety of forms such as charts, graphs, tables and links that are vital for making educated decisions and gauging progress towards meeting strategic goals.

The System shall have scorecards that employees can create by selecting data from a single or multiple applications and graphically display the results on the dashboard. With scorecards users can conduct “cross-application” analysis of data and results to illustrate how the Agency or their particular division or department is performing based on any criteria.

5. Task Management

The System shall have a task management feature so that users can view activities by target date, person responsible, department or location and have a consolidated view of the tasks they are assigned to do such as, training, corrective actions, investigations. The task management feature will automate the process of alerting employees when a task is

overdue and send out email notifications that ascend up the chain of command if requirements are not fulfilled.

6. Attachments

The System shall have the ability for users to attach any files relating to an incident report (a picture, jpeg, word, pdf's, operating procedures at time of incident) and include or any links to any reference material.

7. Reporting Tools

The System shall enable users to create standard and ad-hoc reports based on the users' defined preferences (fields, values, dates, etc.) and to view and disseminate the reports to the team. Users can look at any aspect of Agency performance by generating instant, boardroom-quality reports with the click of a button. The System will have an array of preformatted reports or users can generate their own through the unlimited configurable reports capability to address their job or Agency-specific needs. Users shall be able to export data from all modules.

8. Single Sign On

The System shall have a single sign-on feature which supports single sign-on (SSO) to simplify secure authentication to the System so users don't have to manage another login and password. This can lead to increased user adoption.

III. Intelix System Configuration and Functionality

The Contractor shall configure and install the System's applications so that it provides the functionality, external interfaces, performance characteristics, attributes, and design constraints that are described below as set forth in the Design Requirements Document and Specifications Document.

The fully configured System applications shall automate the reporting and tracking of safety incident data reports, training, workers compensation, hazards, non-conformances and corrective actions pursuant to the mutually agreed upon Specifications Document.

A. System Functionality. At a minimum the System must provide the following functionality as specified in Contractor's Product documentation:

1. Store and retrieve historical data.
2. Automate the incident reporting process
3. Import data from other sources (e.g. HRDB, Vehicle Import)
4. Export data to other sources (e.g. .XLS and .CSV)
5. Archive data on an ad hoc basis

6. Provide a repository for all incident records
7. Attach documents and links to incident reports
8. The System will be capable to allow access to employees within the SFMTA based on licensing and security.
9. Data can automatically be filled between specified forms in order to minimize duplication of data entry.
10. Forms and information will be linked by a unique Incident Number.
11. Software has configurable multi-layer security based on user, groups, and functions.
12. The System will be fully configurable for a System Administrator and SFMTA will be able to make changes.
13. The system specifications described herein will be compliant with the specifications agreed to mutually by the Contractor and SFMTA.
14. The software must have a security configuration console that has administrative functionality to manage user access, user security levels, and general application configurations.

B. External Interfaces

1. The Interface will be documented in the Specifications Document and approved by the SFMTA prior to configuration.
2. All data input into the applications can be accessible to the SFMTA through the System's Reporting Tool and can be exported in an .XLS or .CSV format.

C. Design Constraints

1. All facets of the System must comply with software standard industry practices
2. It is estimated the application will be implemented within fifty-two (52) weeks.
3. The System shall use a Microsoft SQL Database
4. All services to be performed by the Contractor will be reviewed by the SFMTA prior to any work commencing. The basis of this review will be a Project Plan developed by the Contractor.
5. The Operating environment will be based on Microsoft.

IV. Configuration Preparation Tasks

In preparation for the configuration of the System, the Contractor shall conduct the following tasks:

Task 1. Installation - Authentication of Licensed Technology on ASP environment

The Contractor shall authenticate 65 of the 125 perpetual software user licenses for SFMTA use. These 65 licenses will include five (5) System Administrator licenses and forty (40) concurrent supervisor access user licenses and twenty of the concurrent user limited access user licenses. Contractor shall install the remaining 60 Intellex user licenses prior to the User Acceptance Testing.

Task 2. Project Kick-off Meeting

The Contractor shall conduct a project kickoff meeting to orient the SFMTA Project team on the Contractor's methodology and prepare for the Design Workshop where the design requirements will be finalized. The Contractor shall provide SFMTA with an overview of the System, the project organizational structure, a communication plan and a Project Plan with a schedule and detailed timeline.

Deliverable 1: Project Plan with detailed timeline

Task 3. Design Workshop

The Contractor shall conduct a Design Workshop to finalize the design and functional requirements for the System. Contractor shall review the Phase I design requirements document and identify any modifications. The Contractor shall gather design and functional requirements for the non-revenue vehicle incidents form and the audits management application. The Contractor shall provide SFMTA with introductory training on the pre-configured System prior to the Design Workshop.

The Contractor shall utilize the information gathered in the Design Workshop to develop a comprehensive Specifications Document which includes all aspects of the configuration of the System including Phase I design requirements reflected in the Design Requirements Document and modifications if any, audits management application, and the non-revenue vehicle incidents form. The Specifications Document will include platform and interoperability standards, integrations, imports, reports, workflows, role access and security, data imports and reports, and mock-ups of application forms. The Contractor shall complete the Design Workshop, and provide the Specification Document to SFMTA pursuant to the Project Plan. The Specification Document will be approved as set forth in the Project Plan. An estimated schedule for these activities is provided in XVI. Schedule.

Deliverable 2: Specifications Document – based on the Design Requirements Document developed in Phase I, and Design Workshop II review of Phase I Design Requirements Document, Audits Management and Non-Vehicle Revenue Form Design Requirements.

V. Intelex System Incident Reporting Requirements

The Contractor shall configure the System with the following applications, forms, third party interfaces, data migration, and reporting to enable SFMTA users to report various incidents electronically. The Contractor shall conduct Quality Assurance testing on the System and provide SFMTA with the test cases and final results. The Contractor shall configure the System as agreed to in the Design Requirements Document and the Specifications Document.

1. Configuration Services to be Provided

Task 1: Incident Management Module

The Contractor shall configure the System to have an incident tracking function that enables the SFMTA to collect incident data, analyze trends, investigate accidents, and create regulatory reports. The module will enable users to perform root cause analysis and accident preventability determination based on fields defined in the field list. The Contractor shall ensure incident reporting forms are mobile application compatible for use on Tablets and have capability for attaching pictures, video, taken with the Tablet.

Risk assessments and status tracking of safety hazards will also be included in the function. The Contractor shall ensure reporting forms are mobile application compatible for use on a Tablet and have capability for attaching pictures or video taken with the Tablet.

Task 2: Transit Operator Form

The Contractor shall configure the System so that a transit operator, and only a transit operator, has the ability to submit a transit operator report on an incident electronically through the transit operator form of the Incident Management module using their computer or a Tablet.

Task 3: Inspector Form

The Contractor shall configure the System so that a transit inspector, and only a transit inspector, has the ability to submit an inspector report on an incident while in the field electronically through the Incident Management module using their Tablet.

Task 4: Miscellaneous Form

The Contractor shall configure the System so that the transit operator will have the ability to submit a miscellaneous form electronically through the Incidents Management module using their computer or a Tablet.

Task 5: Station Agent Form

The Contractor shall configure the System so that a station agent, and only a station agent, can submit a station agent report on an incident electronically through the station agent form of the Incident Management module using their computer or a Tablet.

Task 6: Security Incident Form

The Contractor shall configure the System so that any SFMTA employee can submit a security incident report through the Incident Management module to report a security incident using their computer or Tablet.

Task 7: Master Transit Safety Incident Form

The Contractor shall configure the System so that the System Safety Administrator will be able to create the Master Transit Safety Report by attaching the incident reports to a master incident for all incidents reported by the Operator, Inspector, Station Agent, Blind Claim, and Security transit related reports on an incident.

Task 8: Blind Claim Report Form

The Contractor shall configure the System so that only the System Safety Administrator can create Blind Claim Report in the database from information provided by City Attorney outside the System.

Task 9: Non-Revenue Vehicle Incident Form

The Contractor shall configure the System so that any SFMTA employee can submit a non-revenue vehicle incident report through the Incident Management module to report a non-revenue vehicle incident using their computer or Tablet.

Task 10: Cause Analysis Form

The Contractor shall configure the System so that the Transportation Safety Analyst can create one or more cause analysis records during their incident investigation and specify the cause title, analysis date, and owner of the cause and identify causal factors for the incident.

Task 11: Workers Compensation Application

The Contractor shall configure the System so all SFMTA employees are able to submit an injury report through the Workers' Compensation Application. The module shall track employee injuries by facility, incident, and transit division. Injuries will be categorized by body part, type of injury, and cause of injury. Email notifications will inform the Workers Compensation Group and Claim Vendor that an employee injury report has been submitted so they can timely review. The Workers' Compensation Group will be able to generate the DWC Form 1 and the Form 5020 for submittal to the State.

Task 12: Hazard Management Application

The Contractor shall configure the System so that any SFMTA employee who identifies a hazardous condition can submit a hazard report through the Hazard Management Module. The Transportation Safety Specialist will be able to create one or more records of a hazard from a cause analysis of their incident investigation. The Transportation Safety Specialist and Industrial Safety will be able to create one or more corrective actions for a hazard record that was submitted and that they reviewed.

The hazard application will enable safety employees to track and analyze industrial hygiene activities such as exposure assessments, personal protective equipment monitoring, and other key industrial hygiene functions based on fields in the form.

Task 13: Non-Conformance Management Application

The Contractor shall configure the System so that a Transportation Safety Specialist and Industrial Safety employee can create one or more records of non-conformance from a cause analysis of an incident through the Non-Conformance Management module. A Transportation Safety Specialist and Industrial Safety employee will also be able to create a stand-alone non-conformance (independent of an incident) The Transportation Safety Specialist or Industrial Safety employee will be able to create one or more corrective actions for a non-conformance record during the Open stage of the Non-Conformance. The System will allow Industrial Safety to create one or more Corrective Actions for a Non-Conformance record during the Open stage of the Non-Conformance.

Task 14: Corrective Actions

The Contractor shall configure the System so that corrective action plans can be generated by SFMTA employees with the right permissions as defined in the Design Requirements Document, based on incident reports, and regulatory agency recommendations. Corrective action plans shall have the capability to link to specific incidents. The corrective action can also be assigned to a member of the SFMTA's training department. SFMTA shall be able to generate reports listing the status and progress of corrective actions and recommended training.

Task 15: Training Management Application

The Contractor shall configure the System to have a training function that tracks and analyzes training activities and incidents, including the training and safety history of employees. User will be able to generate reports of employees who need recertification training or specialized training courses as they have been defined in the course list, triggered by alerts to key personnel and managers. Automatic alerts will notify employees and supervisors of required training. A SFMTA employee will be able to self-register based on courses in the System. An SFMTA employee will be able to assign one or more courses to one or more workgroups as training requirements. Employees will automatically be registered for refresher courses based on a frequency that is indicated for the course. Trainers will be able to print a batch of "certificates of completion" for employees who complete a course once SFMTA has created a merge template which Contractor will provide one (1) sample template and train SFMTA.

2. Configuration of Third-Party Interface Connections

The Contractor shall configure the following three (3) third-party interfaces. The interfaces data flow will be unidirectional (from SFMTA to the Contractor). The configuration will enable updates on a weekly basis (HRDB) or a scheduled import with data from the defined interfaces. Contractor will assist SFMTA with the third-party interface connections by telephone and email consultation.

Task 1: Human Resource Database Interface

The Contractor shall configure a template so that SFMTA can make an initial upload of data for all SFMTA employees from the Human Resource Database Interface (HRDB) into

the System and make ongoing updates of employee information from HRDB on a weekly basis. The HR data will be imported using the existing the Contractor's External Database Import System (EDIS) without modification. SFMTA will be able to repurpose up to five (5) fields for new purposes of employee data within field character limits.

Task 2: Vehicle Import Interface

The Contractor shall configure a template so that SFMTA can make an initial upload of information on SFMTA vehicles into the System and be able to make daily scheduled FTP imports of vehicle information to import into the System thereafter.

Task 3: Single Sign-On

The Contractor shall configure the System to enable single sign-on capability by bypassing the System login.

***Deliverable 3:* A .csv template for HRDB and Vehicles Import Interfaces**

3. Configuration for Data Migration from TransitSafe to the System

The Contractor shall configure the System to be able to import ten years of historical data from the existing TransitSafe database into the System. This includes incident, employee history, training, industrial safety, and corrective action data. The Contractor shall enable the SFMTA to be able to import various data into the System by training the SFMTA on the use of the System data import tool.

Task 1: Data imports

The Contractor shall configure the System to allow import of historical data into the database. The Contractor shall provide a .csv (comma separated values) format-template of the configured System to the SFMTA and provide data import templates so SFMTA can make one-time imports of the following information:

- Routes (Incident Management Application)
- Location Intersection (Location Table)
- Location Structure (Location Table)
- Training Courses (Training Management)
- Training History including Employee Training History (Training Management)

Task 2: Intelx System Data Import Tool training

The Contractor shall train the SFMTA on the use of the System data import tool so SFMTA can manage updates to the following tables of information after the initial upload:

- Incidents (Operator, Supervisor, System Safety, Security)
- Employee Operator Incident History
- Hazards
- Corrective Actions
- Training Sessions (all instances of the courses when each one was held)

Deliverable 4: Configured data import templates for imports in Task 1

Deliverable 5: Training of SFMTA staff on Contractor's data import tool

4. Configuration of Reports & Dashboards

Task 1: Configuration of Reports

The Contractor shall configure the System to generate the following customized reports as agreed in the Design Requirements Document and the Specifications Document and Table 4:

- **Incident Management Application – Incident Management Reports**
 - Dispatcher Report of Operator Reports daily
 - Open Blind Claims Report monthly
 - Regulatory Reports
 - Form EZ,
 - Form MTA-R,
 - NTD S&S Form 40
 - NTD S&S Form 50
 - Corrective Action Summary Reports
- **Non-Conformance Application**
 - Non-conformance corrective action reports
 - Corrective Action Summary Reports and Non-Conformances
- **Hazard Management Application**
 - Hazard reports
 - Corrective Action Summary Reports and Non-Conformances

Deliverable 6: Configured Reports

VI. Testing of the Fully Configured Intelex System

The Contractor shall assist SFMTA with testing of the fully configured System to ensure that it has the design and functionality as set forth in the Specifications Document. Assistance during UAT shall be through telephone and email consulting services.

Task 1: System Integration Testing

The Contractor shall support SFMTA with developing a System Integration test plan. The Contractor shall assist SFMTA with System Integration testing over a three (3) week period by telephone and email.

Task 2: User Acceptance Testing (UAT)

The Contractor shall assist the SFMTA with UAT of the System over an eight week period by telephone and email. UAT shall be completed as set forth in the Project Plan. It is estimated UAT will be completed 32 weeks from Project Kickoff.

Task 3: Walk-through of the Configured Applications

The Contractor shall perform an initial walkthrough of the configured applications to ensure that the correct data elements are being capture.

Task 4: Fine Tuning and Rework of Configured Applications

Following the initial review, Contractor shall fine tune and rework the configured applications based on findings during UAT presented to consultant by SFMTA.

Task 5: Walk-through of Fine Tuning and Rework of Configured Applications

Contractor shall perform a walkthrough to identify and confirm the rework corrected the UAT findings. Any findings for re-work found during UAT will be prioritized by SFMTA and the Contractor.

Task 6: Production System Installation

Upon completion of the UAT and Acceptance of the System, the Contractor shall update both the Production and Test environments with the final fully configured System. It is estimated that the production system installation shall be completed within 42 weeks of the Project Kick-off.

Deliverable 7: Final Configured Solution based on UAT results

VII. Acceptance

1. Approval and sign off

The SFMTA Project Manager and the SFMTA System Safety Director and SFMTA Chief Safety Officer shall sign-off on all design documents from Phase II Design Workshop and Acceptance of the Licensed Software. Additionally, the new design and functionality requirements identified in the Design Workshop will include sign-off by the subject matter experts.

2. Deliverable Acceptance Review – Documents

As required by the Project schedule, the Contractor will submit an electronic draft document of each deliverable to the SFMTA Project Manager. The SFMTA Project Manager will timely review and provide the Contractor with comments and requested changes for each draft deliverable. The Contractor will respond to SFMTA comments, make changes to the draft document as the SFMTA Project Manager may require, and provide a corrected electronic draft to the SFMTA Project Manager for final review and approval. Once approved, SFMTA will provide notice of approval of a deliverable

document to the Contractor's Project Manager in writing within five (5) business days of receipt of the final draft. The SFMTA's Project Manager's final review of a draft deliverable document will be limited to those items identified in the initial review. The SFMTA will endeavor to complete all reviews within five (5) business days of receipt of the deliverable.

Each deliverable document will be approved in accordance with the following procedure:

- One (1) electronic draft of the deliverable document will be submitted to SFMTA Project Manager. The SFMTA Project Manager will make and distribute additional copies to other SFMTA reviewers as needed.
- SFMTA will provide timely review and reasonable agreement of all deliverables. If proposed changes result from that review, SFMTA will provide a written description of the requested changes to the Contractor's Project Manager.
- If the deliverables do not conform to SFMTA's reasonable expectations, the Contractor will make the adjustments to correct the non-conformances and provide to SFMTA for final approval. **Note: SFMTA's review will be contained to only those items identified in the previous version's non-conformance.**

3. Deliverable Acceptance Review – Configured Software

The following procedure shall apply for acceptance or signoff by the SFMTA of the Final Solution. After the Contractor notifies the SFMTA that the Licensed Technology has been configured and/or customized as per the Phase II Specification Document and any subsequent Change Orders (the "Final Solution"), SFMTA shall have 30 days to review the Final Solution ("Acceptance Period"). If the Final Solution does not materially conform to mutually accepted Phase II Specification Documents, the Contractor shall fix any reported non-conformances within at least 30 days, or a time to be mutually agreed upon. SFMTA shall then have a further 30 days Acceptance Period to test the Final Solution to confirm that the reported non-conformance has been fixed. The SFMTA shall affirmatively notify the Contractor of any material Defects within the applicable Acceptance Period. Use of the Licensed System or any part therein in a commercial or live environment will demonstrate SFMTA's acceptance of the System.

VIII. Training

The Contractor shall train the SFMTA users and System Administrator on the fully-configured System using primarily a train-the-trainer methodology where the employee trained can act as trainers for the rest of the users. The Contractor shall develop "quick start guides" on how to use the System for users to access after training to the satisfaction of the SFMTA.

Task 1: Training of System Administrators users of the System.

The Contractor shall conduct 32 training sessions to train SFMTA users on the System. Of the 32, 12 will be on-site at SFMTA and 20 off-site online. Of the 20 off-site, 13 will cover System Administration and 7 the Contractor shall use the train-the trainer method to train SFMTA users. It is estimated that all off-site and online training sessions will be complete within 42 weeks of the Project Kick-off.

1. The 13 System Administrator Training sessions online will cover:
 - Incidents management Part I
 - Incidents management Part II
 - Non-conformances management
 - Hazards management
 - Training management Part I
 - Training management Part II
 - Audits management
 - System Administration I
 - System Administration II
 - Configuration of Reports I
 - Configurable Reports II
 - Dashboards
 - Scorecards

2. The 7 Train-The-Trainer sessions online will cover:
 - Nonconformance management
 - Hazards management
 - Audits management
 - Configuration of Reports I Configurable Reports II
 - Training management I Training management II

3. The 12 Train-The-Trainer session onsite will cover:
 - Incidents management - two sessions of training on Incident Management and the related forms. Each session will be delivered six (6) times.

4. The Contractor shall record all online sessions and make the recordings available to SFMTA users on the SFMTA Intelex Exchange site.

5. Each training session will be 90 minutes in duration.

6. The Contractor shall provide SFMTA a proposed training schedule four weeks in advance of training.

7. SFMTA shall provide Contractor with 24 hours' notice if employees are unable to attend a scheduled training session. Cancellations after 24 hour notice are billed at the rate determined for the training session plus travel expenses if any were incurred

8. SFMTA will be responsible to limit on-site training to 15 participants each session.
9. SFMTA will be responsible to limit off-site, online to 20 participants each session.

Deliverable 8: Proposed Training Schedule (four weeks prior to Training)

Deliverable 9: Off-site training sessions (20)

Deliverable 10: On-site training sessions (12)

Deliverable 11: Recording of online sessions on SFMTA Intelex Exchange site

Task 2: Training Materials – Quick Guides

The Contractor shall create 14 digital “Quick Guides” (approximately 2 pages each), to supplement the training sessions and provide SFMTA users an easy to follow step-by-step guide on how to use the Intelex System. Of the 14, five will be for the applications and nine will be for the Incident management forms.

1. Five of the “Quick Guides” will be for the applications:
 - Non-conformances management
 - Hazards management
 - Audit management
 - Training management
 - Workers compensation management
2. Nine of the “Quick Guides” will be for each of the Incident Management forms:
 - Transit operator form
 - Inspector report form
 - Miscellaneous report form
 - Blind claim form
 - Station agent form
 - Security incident form
 - Master transit safety incident form
 - Cause analysis form
 - Non-revenue vehicles form

Deliverable 12: Quick Guides – 14 digital copies

Task 3: Application Builder training

After Go-Live, Contractor will provide Application Builder 1-4 and Application Builder Advanced training courses on the basics of App Builder (making field-level changes, modifying existing workflow). Each training session will be 90-minutes in duration and provided remotely.

Deliverable 13: Off-site training sessions (5)

IX. Go-Live

The Contractor shall assist the SFMTA to bring the System fully on-line and into production use (“Go-Live”). The Contractor shall assist SFMTA with three separate roll-outs of the fully-configured System. Contractor will provide phone and email consulting services, and 3 days of onsite consulting services for each of the roll-outs. Rollouts will be completed as estimated: Rollout 1 = forty-six (46) weeks from Project Kick-off; Rollout 2 = forty-nine (49) weeks from Project Kick-off; and Rollout 3 = fifty-two (52) weeks from Project Kickoff.

Task 1: Roll-out #1

The Contractor shall provide on-site assistance at SFMTA to roll-out the System’s Incident Management and Non-Conformances applications for the SFMTA Transit Division only.

Task 2: Roll-out #2

The Contractor shall provide on-site assistance at SFMTA to roll out the System’s Workers’ Compensation application, Incident Management application non-transit, Security application and the Non-Revenue Vehicles form within the Incident Management application.

Task 3: Roll-out #3

The Contractor shall provide on-site assistance at SFMTA to roll out the System’s Workers’ Rollout three for Training Management and Hazards Management applications. The Contractor shall add the audits management application to the rollout with approval of a change order.

The Contractor shall work with SFMTA during Post-Go-Live, which is the first 30 days after Go-Live, to prioritize and address any issues that remain.

X. Phase II Services Project Close-out

The Contractor shall close-out Phase II of the Project after the System is launched and accepted by SFMTA.

1. The Contractor shall transfer all remaining minor action items documenting outstanding product issues to the Contractor’s Application Support Department (“ASD”) to address the issues going forward.
2. The Contractor shall ensure that only minor issues are transitioned and all material non-conformance issues are fixed prior to hand off to ASD.

Deliverable 14: The Contractor’s Application Support documents (contact information and how to submit to the Contractor issues, minor and major enhancement requests.)

XI. Schedule

Contractor and SFMTA estimate that the overall schedule for this Project will take approximately fifty-two (52) weeks from Project Kick-Off . The actual Project start date will be determined based on the availability of the required Contractor and SFMTA resources.

Contractor shall initiate the Project within 3 weeks of execution of this Agreement or within 1 week of the Effective Date whichever occurs later, contingent on SFMTA availability. The key tasks and associated timeframes are as follows:

1. INITIATION

- Project Kick-Off Week 1

2. DESIGN

- Design Workshop -onsite Week 2
- Design Documentation Updates Week 3-5

3. CONFIGURATION

- Configuration Week 6-13
- Quality Assurance Week 14-17
- Integration Configuration and Data Migration Week 17-21
- Report Building Week 20-24
- Integration Testing Week 22-24

4. TESTING

- User Acceptance Testing Week 25-32
- Rework & Fine Tuning Week 26-32

5. DEPLOY

- Training Week 33-38
- Production Environment Setup Week 39-42
- SFMTA Training End Users Week 39-42
- Go-Live – Phase I Week 43-46
- Go-Live – Phase II Week 47-49
- Go-Live – Phase III Week 50-52

XII. Consulting Hours

Throughout the Project, Contractor shall provide an estimated six hundred and forty (640) hours of consulting hours to assist SFMTA through specific stages of the Project and to complete the required milestones. While the consulting hours are estimated at six hundred and forty (640) in total for all stages, these hours can be interchangeable if the specific consulting needs for each

stage are more or less than estimated for that stage, provided that such changes are documented and mutually agreed to by both parties. If total consulting hours for the project exceed 640 hours, the additional hours are subject to a mutually agreed to change order.

Consulting services shall be provided during the Business Day. “Business Day” means any day other than Saturday, Sunday or a legal holiday in Ontario, Canada and during Contractor’s regular business hours. Contractor’s regular business hours are between the hours of 8:30 am and 5:00 pm Eastern Standard Time. Consulting services can be provided outside of these hours at SFMTA’s request and as mutually agreed to by both Project Managers. Contractor shall respond to SFMTA requests for consulting services within one (1) Business Day. All onsite consulting services shall be provide during regular SFMTA business hours, which is 8:00 am – 5:00 pm Pacific Time.

1. Initiation Stage

No additional consulting hours are estimated for this stage.

2. Design Stage

Contractor will provide up to forty (40) hours of consulting support services Online, after the Design Workshop, to assist with action items related to requirements gathering.

3. Configure Stage

Third Party Interface - Contractor will provide up to sixty-four (64) hours of consulting support services to assist SFMTA with third-party interface connections.

Data Migration - Contractor will also provide up to one hundred and twelve (112) hours of consulting support services to assist SFMTA with importing data into the System.

4. Testing Stage

System Integration Testing - Contractor will provide up to twenty-four (24) hours of consulting services over a period of three weeks to answer questions and assist SFMTA with system integration testing. This support will include phone and email consultation.

UAT - Contractor will provide up to eighty (80) hours of consulting services over a period of eight weeks to answer questions from SFMTA regarding User Acceptance Testing (UAT). This support will include phone and email consultation.

Rework and Fine Tuning – Contractor will provide up to eighty-eight (88) hours of consulting services to assist SFMTA with changes identified during User Acceptance Testing.

5. Deployment Stage

Contractor will provide up to a total of two hundred and thirty two (232) hours of consulting services during the Go-Live and Post-Go-Live milestone accomplishments as follows:

Go-Live – Contractor will provide up to a total of seventy-two (72) hours of consulting services for Go Live Support. It is estimated that the seventy-two hours of consulting services will be provided as follows:

- b. Incident Management & Non-conformance – Transit 40

c. Non-Revenue Vehicles, Security Incidents, and Workers Compensation	16
d. Hazard Management and Training Management	<u>16</u>
Total:	<u>72</u>

Post-Go-Live – Contractor will provide up to a total of one hundred sixty (160) hours of consulting services for Post-Go-Live Support. It is estimated that the one hundred sixty hours will be provided as follows:

e. Incident Management & Non-conformance- Transit	96
f. Non-revenue vehicles, Security Incidents, and Workers Compensation	32
g. Hazard Management and Training Management	<u>32</u>
Total:	<u>160</u>

XIII. Staffing Requirements and Responsibilities

A. SFMTA

SFMTA will provide, at a minimum, the following participants for the duration of the Project:

1. Project Manager – Primary contact with Contractor. Manage all employees’ and contractors’ activities. Approve and sign-off on key deliverables. Provide reasonable and timely assistance as required for the Contractor to complete its activities.
2. IT Personnel – Primary technical contact with Contractor. Provide technical input to the Project. Work with Contractor to setup and install the System as needed.
3. Subject Matter Expert – Participates in the development of the business and functional requirements in workshop sessions with the Contractor team on an as-needed basis. Provides feedback on, approval and sign-off on the specification documentation. Conducts User Acceptance Testing and provides reasonable and timely assistance as required for the Contractor to complete its activities
4. Steering Committee Member – Provides executive level review of project status and participates in monthly steering committee meetings.

SFMTA will provide the following participants as needed for the Project:

1. System Administrator – Receive training on application and platform configuration to perform these functions after end of project. Provide reasonable and timely assistance as required for Contractor to complete its activities.
2. Power User – Receive training on application use and reports configuration to be able to perform these functions after the end of the project.

The responsibilities listed in this section are to be provided by the SFMTA at no charge to Contractor. Contractor's performance is predicated upon the following responsibilities being fulfilled by the SFMTA and its third-party partners.

1. Provide, at a minimum, the following participants for the duration of the Project:
 - a. Business Sponsor(s),
 - b. Business SMEs,
 - c. IT staff
2. Ensure they and any third-party partners:
 - a. Actively participate in the Design Workshop, including providing the necessary skilled resources to work with Contractor personnel on technical specifications and designs
 - b. Provide Contractor with relevant available reference documentation such as current forms, workflow diagrams, reports, dashboards, and procedures
 - c. Provide timely responses to requirements clarification and resolution of issues
 - d. Provide appropriate facilities for the delivery of the project including an appropriate sized room, whiteboard, projector and internet access
 - e. Manage all SFMTA employees' and contractors' activities
3. Provide timely review and feedback on the deliverables and documents developed by Contractor.
4. Cleaning and validation of all data prior to importing or integrating into the Solution.
5. Complete data import templates (provided by Contractor) with associated metadata and drop completed template to staging location for pickup by Intalex. All activities related to actual importing of the data (test runs, data cleansing and fixing data issues, production run).
6. Ensure that Single Sign-On users have identical Intalex and domain user ids and passwords.
7. Ensure that all data imported to the System has unique identifiers.
8. Develop any additional required reports using the Configurable Reports tool.
9. Provide access to SMEs of other systems that System will be required to integrate with.
10. Provide resources needed to adequately test the system during User Acceptance Testing.
11. Provide any necessary training on the System to SFMTA end-users.
12. Provide twenty-four (24) hours' notice if unable to meet any scheduled training sessions. Cancellation thereafter will result in the time being billed to the SFMTA at the rate that was determined for the training session, plus any travel expenses already incurred.

B. Contractor

The Contractor shall provide, at a minimum, the following participants for the duration of the Project:

1. Project Manager – Primary contact with SFMTA Project Manager. Manages scope, schedule, and budget for the Project. Prepares and maintains Project Plan. Chairs weekly Project status calls and develops detailed meeting minutes. Evaluates priorities and manages timely delivery of the deliverables. Provides status reporting on the Contractor’s deliverables to SFMTA Project Manager. Manages the Change Control Process. Facilitates Project closure
2. Solution Architect – Primary technical contact with SFMTA. Gathers the remaining detailed requirements. Prepares and updates the Specification Document. Conducts scope verification. Provides best practice guidance.
3. Software Consultants – Conducts configuration and report building. Designs and makes changes to the configured applications as needed. Assists with user acceptance testing.
4. IT Personnel – Installs the System and performs System Integration points. Provides information and assistance about hosting and other technical issues.
5. Steering Committee Member – Provides executive-level review of Project status and participates in monthly Steering Committee meetings.

XIV. Governance

The SFMTA and the Contractor agree to the following Governance procedures:

- **Weekly Project Management meetings**

Contractor shall coordinate the weekly project management meetings with mandatory participation by the SFMTA and Contractor Project Managers.

- **Monthly Steering Committee**

Contractor shall coordinate the monthly steering committee conference calls to discuss overall project status, including timeline, budget and risk mitigation. The key objective of this monthly steering committee meeting is to ensure the SFMTA’s business requirements are being met and the Project is proceeding as planned. Escalation to the Steering Committee may occur by the respective Project Managers for issue and/or change management.

Changes to the Phase II Project scope of work that impact costs or extend the schedule for completion of the work or deliverables must be memorialized in a Contract Amendment approved and signed by both parties.

XV. On-Going Support. The Contractor shall provide on-going software support and maintenance pursuant to the terms and conditions of Appendix C to the Agreement.

XVI. Service Level Agreement (SLA)

1. Definitions.

1.1 "Hosted Service." The Hosting of the Licensed Software will be provided by Contractor through a 3rd party provider of hosting services that operates SSAE16 Type II SOC1 certified hosting centre. Contractor will notify Licensee if a change in hosting provider will occur and ensure that new provider is also similarly certified.

1.2 "Service Level." The measurements upon which the quality of Hosted Service is measured.

1.3 "Basic Service Level." Any Service Level set forth in this Agreement that is not a Critical Service Level. Refer to Section 3.1.

1.4 "Critical Service Level." Any Service Level that is described as "critical" in this Agreement. Refer to Section 3.1.

1.5 "Downtime." Any period where the Hosted Service are not available to the end users, regardless of reason.

1.6 "Exempt Downtime." Downtime where the parties have previously agreed in writing upon the time and duration of such Downtime, e.g. planned maintenance or other regularly scheduled event. Only Downtime occurring during such previously-agreed period shall be deemed to be Exempt Downtime.

1.7 "Unscheduled Downtime." All Downtime that is not Exempt Downtime.

2. Procedures. The establishment of Service Levels will be accomplished as follows:

2.1 Commencement. Service Levels are established as provided herein and will be measured starting on the "go live" date for the Hosted Service. Service Level reporting will be put into effect starting on the "go live" date for the Hosted Service.

2.2 Service Level Changes. The Parties may agree to add, delete or modify Service Levels. All such changes must be mutually agreed to in writing. Should new technology or improved measurement capabilities be deployed by Contractor that impact the Service Level reports, Contractor and Licensee will agree upon a new measurement process and amend this Schedule as appropriate. Should Contractor and Licensee agree to implement a new reporting mechanism, Contractor and Licensee may establish new Service Levels to be aligned with the new reporting mechanism.

2.3 Excused Failures. Failure to meet Service Levels will not be deemed to be a failure by Contractor if one of the following conditions exist: (i) the failure is mutually agreed not to be the fault of Contractor; (ii) the gross negligence or willful misconduct of Customer; (iii) failure of equipment not provided by or maintained by Contractor; or (iv) force majeure events as set forth in the Agreement.

2.4 Basic Service Level Failure. If Contractor fails to meet a Basic Service Level for the services described herein (each, a "Basic Service Level Failure"), Contractor shall pay

Licensee 3% of the annual Maintenance & Support payment outlined in Schedule A, Section 4, in a cash payment to be received within thirty (30) days of any such request.

2.5 Critical Service Level Failure. If Contractor fails to meet a Critical Service Level for the services described herein (each, a “Critical Service Level Failure”), Contractor shall issue pay Licensee 10% of the annual Maintenance & Support payment outlined in Schedule A, Section 4, in a cash payment to be received within thirty (30) days of any such request.

3. Service Level Metrics. The following Service Levels are deemed to be default metrics and will apply to the Agreement.

3.1 Availability. The Hosted Service shall be online and available 99.9% of the time, excluding Exempt Downtime, as calculated monthly on a 24h/7 day basis. If the Hosted Service is available between 99.0% and 99.49% of the time, a Basic Service Level Failure shall be deemed to have occurred. If the Hosted Service is available between 98.00% and 98.99% of the time, two Basic Service Level Failures shall be deemed to have occurred. If the Hosted Service is available between 97.0% and 97.99% of the time, a Critical Service Level Failure shall be deemed to have occurred. If the Hosted Service is available less than 97% of the time, two Critical Service Level Failures shall be deemed to have occurred, and Contractor shall pay to Licensee a cash payment to be received within thirty (30) days of any such request for the month that such failures have occurred.

3.2 Backups

3.2.1 Supplier, via its third party hosting provider, shall perform nightly (differentials) and weekly backup (full system) of the Website and Data. Backup are stored on the network and moved to tape backups nightly. Weekly tape backups are sent to Iron Mountain for safe storage in the event of a catastrophic loss of the data center.

3.2.2 Managed Backup Technicians are available 24/7 to monitor backup jobs, perform data restores, change configurations or answer backup questions. Once a request for a restore is received, personnel will immediately start the restoration of the data. If the issue is server related the licensee will not experience any change in service as redundant servers are used. If the issue is related to a network device, licensee’s access may be hindered for a maximum of two hours.

4. Termination Option for Chronic Problems. Either Party may terminate this Agreement and without liability or penalty by notifying the other Party within ten (10) days following the occurrence of either of the following: (i) Licensee experiences more than five (5) Unscheduled Downtime periods in any three (3) consecutive calendar month period; or (ii) Licensee experiences more than eight (8) consecutive business hours of Unscheduled Downtime due to any single event. Such termination will be effective thirty (30) days after receipt of such notice by the terminating party.

5. **Suspension.** If Contractor is materially hampered in fully performing hereunder for any reason outside of Contractor's reasonable control including without limitation any force majeure event as set forth in the Agreement (all of which events are herein called "Disability") Licensee may suspend use of the Hosted Service and its obligations to make subscription fee payments to Contractor during the period of such Disability.

6. **Scheduled Downtime.** Contractor's hosting partner typically performs a maintenance activity that will "cause interruption to Contractor clients" once a year and notifies Contractor well in advance of this activity allowing Contractor to notify clients. Contractor also performs maintenance on the Licensed System three to four times a year and includes server maintenance, windows updates, patches, new releases, etc. Contractor will notify Licensee a minimum of two weeks in advance of said maintenance, will occur over weekends and not exceed more than eight hours in duration.

7. Licensee Data

7.1 Limitation on Use. Neither Contractor, its employees or subcontractors shall use, reproduce, disclose or retain Licensee Data except (i) as specifically authorized in this Agreement and only to support the Services hereunder, (ii) in accordance with all then applicable Laws, and (iii) in accordance with all applicable Licensee and/or practices (provided Contractor is given a copy of such policies or practices).

7.2 Privacy Administrator. Each Party shall designate an authorized representative, by position or title, who will be responsible for overseeing the transmission, receipt, and handling of the Licensee Data, receiving all notices, and handling all administrative matters related to Licensee Data pursuant to this Agreement. The Parties agree to cooperate with each other and to coordinate all activities related to Licensee Data during the Term of this Agreement through their respective Privacy Administrators.

7.3 General Obligations to Safeguard Licensee Data. Contractor and any of its subcontractors involved in data storage shall implement and maintain appropriate measures designed to meet the following objectives: (i) to ensure security and confidentiality of Licensee Data; (ii) to protect against any anticipated threats or hazards to the security or integrity of Licensee Data; and (iii) to protect against unauthorized access to or use of Licensee Data. Contractor shall maintain physical, electronic and procedural controls and safeguards in compliance with the Law, to protect the Licensee Data from unwarranted disclosure. These controls shall include the maintenance of appropriate safeguards to restrict access to the Licensee Data to those employees, agents or service providers of Contractor and its subcontractor who need such information to carry out the purpose of providing the Services. For information disclosed in electronic form, Contractor agrees that such safeguards must include electronic barriers (*e.g.*, "**firewalls**" or similar barriers) and password protected access to the Licensee Data. In addition, in the event that Contractor sends or receives any Licensee Data over the Internet or through an ISP, Contractor shall secure or encrypt such information in a manner consistent with industry security standards. For information disclosed in written form, Contractor agrees that such safeguards shall include secured storage of Licensee Data. Contractor shall also establish and maintain any additional physical, electronic and procedural controls and safeguards to

protect the Licensee Data from unwarranted disclosure as may be required for Licensee to comply with any Law.

- 7.4** Notification of Loss or Unauthorized Access. Contractor agrees to immediately notify Licensee in the event that Contractor (or its 3rd party hosting provider) reasonably suspects that Licensee Data has been, or may have been, lost or subject to unauthorized internal or external access. To the extent Licensee seeks the assistance of Contractor, Contractor agrees to reasonably cooperate with Licensee at Contractor's own expense to determine the scope and severity of any such loss or unauthorized access.
- 7.5** Return and Destruction of Licensee Data. Upon the expiration or termination of this Agreement or the particular Statement of Work for which the Licensee Data was disclosed to, or obtained by Contractor, Contractor shall (i) make a true and complete copy of the Licensee Data upon the media and in a format specified by Licensee, and (ii) verify that the copy is correct and readable, and (iii) provide such copy to Licensee. Upon receipt of written verification by Licensee that the copy provided is complete and correct, Contractor shall permanently destroy or render unreadable any media or data repository used to store or record Licensee Data. The means of media or data destruction must ensure that Licensee Data is permanently destroyed and cannot be subsequently accessed or read based on commercially reasonable standards. Upon request by Licensee, Contractor shall provide written confirmation to Licensee of the permanent destruction as required by this Agreement.

**Appendix B
Calculation of Charges**

Project Milestones	(*) Amount	Completion and Payment Criteria
Initial Installation	\$78,651	Licensed Technology on ASP environment
Design Workshop	\$131,085	Deliver Specifications Document
Configuration	\$157,301	Deliver Fully Configured System
User Acceptance Testing	\$78,651	Acceptance of Final Fully Configured or completion of the Acceptance Period
Training	\$52,434	Acceptance of Quick Training Guides
Go-Live Rollout 3	\$26,217	End of Post Go-Live Period Rollout 3
Total Professional Service Costs:	\$524,339	
Travel		
1 x site visit to SFMTA – 3 people 1 x site visit to SFMTA – 1 person 3 x site visits to SFMTA – 1 person		Design Workshop Completion Training Completion Go-Live Rollouts Completion
Total Travel Costs:	\$27,000	
Software Licenses –		
Software Users – 125; Software Licenses – 8	\$128,200 \$ 94,600	Payment of \$128,000 is due upon execution of the Agreement and within 30 days of date of Contractor’s invoice; \$94,600 for Software Licenses is due upon execution of the Agreement and Installation of Software Licenses (within 120 Days after date of Contractor’s invoice)
Total Software Costs:	\$222,800	
Total Phase II Project Costs (Appendix A Services)	\$774,139	
Software Support and Maintenance (Appendix C Attachment)	\$617,060	Payment of \$154,265 is due on an annual basis, in advance, and within 30 days of date of Contractor’s invoice
Not to Exceed Total Contract Amount	\$1,391,199	

(*) SFMTA will be invoiced for the Professional Service Costs and Travel upon the completion of the above Project Milestones. Payment will be due within 30 days of date of invoice.

Travel Expenditures and Restrictions

Travel expenses conform to, and are in compliance with, the City and County of San Francisco's policies on travel and reimbursement which are based on the United States General Services Administration's (GSA) guidelines. GSA daily allowable travel rates for 2016 are as follows:

Lodging	\$250
Meals and Incidental Expenses	\$ 74

Total travel not-to-exceed budget of \$27,000 includes airfare for five (5) trips by five (5) Contractor staff to SFMTA facility plus hotel and meals and incidental expenses. One (1) trip will require three (3) Contractor staff who will conduct the Design Workshop Phase II on-site at the SFMTA One South Van Ness Avenue facility. A second trip will involve one (1) Contractor staff who will conduct the Train-the-Trainer training on-site. A third trip will include travel for one (1) Contractor employee to be on-site for up to three (3) days during Go Live/Post Go-Live, for each of the three (3) rollouts. These are budgetary travel related expense. Contractor will invoice SFMTA on actuals following the GSA guidelines.

Software License and User Fees

Software Users - 125

- System Administrator – 5
- Full Access User – 40
- Concurrent Supervisor Access – 40
- Concurrent User Limited – 40

Software Licenses – 8

- MOD083 EHS Incident Management
- APP012 Fragment Application Objects
- MOD070 Nonconformance Management
- MOD007 Training Management
- MOD512 Audits with Checklists
- MOD040 Operational Risk Management/Hazard
- IPT004 Data Import & Update Tool
- OTR030 Intellex Open Pass API

Appendix C

This Software Maintenance Attachment (“Attachment”) is an addendum to the **Agreement SFMTA-2016/29** between the City and County of San Francisco (“City”) and **Intelix Technologies Inc. 905 King Street West, M6k, 3G9, Toronto, Canada** (“Contractor”), dated January 1, 2016. The terms and conditions of this Attachment are referenced in and incorporated into the **Agreement** between City and Contractor. City and Contractor agree that the terms and conditions of this Attachment cover support and maintenance services to be provided by Contractor to City, for the computer programs and documentation listed in Exhibit A to this Agreement.

Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Attachment, it shall have the meaning herein set forth.

Effective Date	Date upon which the Controller has certified to the availability of funds for support and maintenance and the Contractor has been notified in writing or the Software is received and installed at the customer site, whichever is later.
Errors, Defects and Malfunctions	Either a deviation between the function of the Software and the documentation furnished by Contractor for the Software, or a failure of the Software which degrades the use of the Software.
Fix	Repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction.
Maintenance Addendum	This Software Maintenance Attachment which together specify the terms and conditions for the correction of software Errors, Defects and Malfunctions in the Software, for the provision of Upgrades to the Software, and for the provision of Support Services to end users of the Software.
Patch	Temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.
Priority Category	A priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

Priority Protocol	Based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.
Software	Licensed programs and associated documentation licensed to City by Intelix Technologies, Inc. , as listed in Exhibit A and any modification or Upgrades or modifications to the program(s) provided under this Maintenance Agreement.
Subsequent Release	A release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Software Maintenance Attachment. Multiple Subsequent Releases may be supported by Contractor at any given time.
Support Services	The Software support service required under this Maintenance Addendum. Support Services include correcting an Error, Defect or Malfunction; providing telephone and/or online support for troubleshooting the Software;.
Upgrade	Either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.
Warranty Period	A period commencing with the installation of the Software product during which reported Errors, Defects and Malfunctions for Software products are corrected without charge in accordance with the provisions below.
Workaround	A change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Whenever the words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **SFMTA**. The words “sufficient,” “necessary,” or “proper,” and the like, mean sufficient, necessary or proper in the judgment of the **SFMTA**, unless otherwise indicated by the context.

- 1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Maintenance Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Maintenance Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in

the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Maintenance Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

THIS SECTION SHALL CONTROL AGAINST ANY AND ALL OTHER PROVISIONS OF THIS MAINTENANCE AGREEMENT.

2. City's Payment Obligation. Compensation for Support Services shall be made as provided in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments,

The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

3. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the Maintenance Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the Maintenance Agreement having been lawfully executed by the City.

The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make

payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

4. Payment; Invoice Format. Invoices furnished by Contractor under this Maintenance Agreement must be in a form acceptable to the Controller. Each invoice must contain a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties." City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Maintenance Agreement.

5. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

6. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Maintenance Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. If this Maintenance Agreement entitles Contractor to the possession, occupancy or use of City real property for private gain, then the following provisions apply:

a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Maintenance Agreement may create a possessory interest subject to property taxation and Contractor, and any permitted successor or assign, may be subject to the payment of such taxes.

b. Contractor, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Maintenance Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Contractor shall report any assignment or other transfer of any interest in this Maintenance Agreement or any renewal or extension thereof to the County Assessor within sixty days after such assignment, transfer, renewal or extension.

c. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests.

7. Scope of Service Coverage

a. Maintenance and Support Services. As of the Effective Date of this Addendum and subject to the terms, conditions, and charges set forth in this Section, Contractor will provide City with Support Services for the Software as follows: (i) Contractor will provide such assistance, including any Fixes, Patches, Workarounds, and Updates as necessary to cause the Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide for City's use, whatever Fixes, Patches, Workarounds and Updates to the Software that Contractor may develop, and (iii) Contractor will update the Software, as required, to cause it to operate under new versions or releases of the operating system used on the Designed CPU so long as such updates are made generally available to Contractor's other Licensees.

b. Scope of Service Coverage. Contractor shall provide Support Services as described herein, in the appendices attached to this Agreement, and in the documents incorporated by reference. Contractor shall provide Updates during the term of this Maintenance Addendum for the Software. Should any of the provisions of this Maintenance Addendum, conflict with the provisions of any Appendix or of any other document incorporated by reference, then the terms of this document shall govern.

c. During the term of this Maintenance Addendum, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1)Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.

2)Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

3)Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

d. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2)Priority 2 Protocol: Within one business day defined as the SFMTA business day of 9:00am – 6:00pm Pacific Time., Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

3)Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software release.

8. Hotline Support. Contractor shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects and Malfunctions and Priority 3. Hotline support shall be made available by phone between the hours of 9 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Access to Hotline support shall be available through the Contractor's web site or via email 24-hours a day, seven-days a week. In the case of Priority 1 errors, defects, or malfunctions, and where the application is not available for use (i.e. server goes down) Contractor will be available and provide 24 x 7support. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect or Malfunction in a Software Product.

9. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software Product and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Maintenance Agreement.

10. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of this Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

11. Qualified Personnel. Work under this Maintenance Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.

12. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

- a. Intentionally deleted
- b. Intentionally deleted

13. Support Service Term and Termination for Convenience

a. Commencement. Support Services for the Software begin on the Effective Date of this Maintenance Addendum.

b. Termination for Cause. In the event Contractor fails to perform any of its obligations under this Maintenance Addendum, this Maintenance Addendum may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days

written notice to Contractor. In the event of such termination, Contractor will be paid for those services performed under this Maintenance Addendum up to the date of termination.

c. Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Maintenance Agreement, at any time during the term thereof, for City's convenience and without cause by giving Contractor thirty days written notice of such termination prior to the end of the then current annual support term. . In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Maintenance Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section.

14. Rights and Duties Upon Termination or Expiration. This Section and the following Sections of the Maintenance Agreement shall survive termination or expiration of this Maintenance Agreement:

7. Submitting False Claims; Monetary Penalties
8. Taxes.
12. Payment Does Not Imply Acceptance of Work.
25. Audit and Inspection of Records.
26. Subcontracting.
27. Assignment.
34. Provisions Controlling.
35. Entire Agreement; Modifications
37. Non-Waiver of Rights.
38. Governing Law.
41. Protection of Private Information.

Subject to the immediately preceding sentence, upon termination of this Maintenance Addendum prior to expiration of the term specified in Section 3, this Maintenance Addendum shall terminate and be of no further force or effect. This subsection shall survive termination of this Maintenance Agreement.

15. Conflict of Interest. Through its execution of this Maintenance Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Maintenance Agreement.

16. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Maintenance Addendum or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used

only in performance of this Maintenance Addendum. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent software developer would use to protect its own proprietary data.

17. Notices to Parties. Unless otherwise indicated elsewhere in this Maintenance Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or fax, and shall be addressed as follows:

To City: **Robin Courtney (SFMTA)**
System Safety Division
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
(415) 701-5694
Robin.courtney@sfmta.com

To Contractor: **Ghazala Parvez**
Intalex Technologies, Inc.
905 King Street West, M6K 3G9
Toronto, Ontario, Canada
ghazala,parvez@intalex.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

18. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Maintenance Addendum. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Maintenance Addendum,. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Maintenance Addendum or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of this Maintenance Agreement shall have the same rights conferred upon City by this Section.

19. Subcontracting. Contractor is prohibited from subcontracting this Maintenance Addendum or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Maintenance Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

20. Intentionally deleted

21. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved

by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. . Contractor further agrees to provide to City the names of each person, entity or committee described above.

22. Drug-Free Workplace. Contractor acknowledges that pursuant to the Federal Drug Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of contract.

23. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Maintenance Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Maintenance Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Maintenance Agreement.

24. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, Contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

25. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Maintenance Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and

provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Maintenance Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this section.

26. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulation of the City and of all state, and federal laws in any manner affecting the performance of this Maintenance Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

27. Provisions Controlling. Contractor agrees that in the event of conflicting language between this "Software Maintenance Attachment" and Contractor's printed form, the provisions of this "Software Maintenance Attachment" shall take precedence.

28. Entire Agreement; Modifications. The Maintenance Addendum together with the Appendices and/or Exhibits hereto, constitutes the entire Maintenance Addendum between the parties and this Maintenance Agreement may not be modified, nor may any of its terms be waived, except by written instrument executed and approved in the same manner as this Maintenance Addendum. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Maintenance Agreement. Should the application of any provision of this Maintenance Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Maintenance Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. Subject to the specific provisions of this Maintenance Agreement, this Maintenance Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

29. Force Majeure. Contractor shall not be liable for failure to maintain Software when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Contractor shall perform as soon as such cause is removed.

30. Non-Waiver of Rights. The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

31. Governing Law. This formation, interpretation and performance of this Maintenance Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Maintenance Agreement shall be in San Francisco.

32. Construction. All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Maintenance Agreement.

33. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Maintenance Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of this Maintenance Agreement.

34. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

35. Graffiti Removal. Reserved.

36. Food Service Waste Reduction Requirements. Reserved

37. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

Services to be provided by Contractor Attachment 1

I. Description of Services

Contractor shall provide software maintenance and support services for all licensed software and customizations as defined in the Software License Agreement and summarized below:

1. Support and maintenance will be for the entire Intelix System made up of the user licenses, configured applications, and Contractor platform with related features:

a. Perpetual software licenses

- MOD083 EHS Incident Management
- APP012 Fragment Application Objects
- MOD070 Nonconformance Management
- MOD007 training Management
- MOD512 Audits with Checklists
- MOD040 Operational Risk Management/Hazard
- IPT004 Data Import and Update Tool
- OTR030 Intelix Open Pass API

b. Software user licenses

- System Administrator – 5
- Full Access User – 40
- Concurrent Supervisor Access – 40
- Concurrent User Limited 40

c. Configured applications:

- Incident Management
- Nonconformance Management
- Hazard Management
- Workers Compensation
- Training Management
- Audit Management

d. Configured forms

- Transit Operator form
- Inspector form
- Miscellaneous form
- Blind Claims form

- Station Agent form
 - Security form
 - Master Transit Safety Incident form
 - Cause Analysis form
 - Non-revenue vehicle form
- e. Configured third-party interfaces
- Human Resources Database Interface (HRDB)
 - Vehicles Import Interface
 - Single Sign-On
2. Contractor shall provide support services by phone will be from 8:00am – 6:00pm PT, every Business Day.
 3. Contractor shall provide access to website or email services 24 hours a day 7 days a week
 4. Contractor shall provide support services for Priority 1 24 hours a day 7 days a week
 5. Contractor shall provide online support services through Intalex Exchange.
 6. Contractor priority service level support services are as follows:
 - a. Priority 1 – 4 hour response time from time of notification
 - b. Priority 2 – 1 business days from time of notification
 - c. Priority 3 – 5 business days from time of notification