

**AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND**

QUESTICA, INC.

PREAMBLE

This agreement ("Amendment No. 1") is by and between Questica, Inc., a Canadian corporation, with its principal place of business located at 980 Fraser Drive, Suite 105, Burlington, Ontario L7L 5P5, Canada ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

RECITALS

- A. The Parties previously entered into an agreement entitled "Master Agreement for Professional Services By and Between the City of Santa Clara, California and Questica, Inc." dated August 26, 2014 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide Budget and Financial Planning System, and the Parties now wish to amend the Original Agreement to add the additional service of Contractor hosting the software environment.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That paragraph number 1 of Section Agreement Provisions of the Original Agreement, entitled "Services to be Provided" is hereby amended to read as follows:

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in the accompanying Exhibits A1, A2, A3 and A4 "Scope of Services." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference. Contractor acknowledges that the execution of this Agreement by City is predicated upon representations made by Contractor in that certain document entitled "Request for Proposal for Professional Services Budget and Financial Planning System Questica Inc.- RFP Response" dated July 16, 2014 (3pm),

("Proposal") set forth in Exhibits A1, A2 and A3 which constitutes the basis for this Agreement and adding Exhibit A4 entitled "Questica Budget Hosting Agreement" dated October 28, 2016.

AND

That paragraph number 2 of Section Agreement Provisions of the Original Agreement, entitled "Qualifications of Contractor – Standard of Workmanship" is hereby amended to read as follows:

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibits A1, A2, A3 and A4 "Scope of Services" shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

AND

That Exhibit A Scope of Services including A1, A2 and A3 is hereby modified by adding A4 entitled "Questica Budget Hosting Agreement" dated October 28, 2016 which is attached to this document.

2. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

3. COUNTERPART/FACSIMILE SIGNATURE

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:



RICHARD E. NOSKY, JR.
City Attorney

Dated: 11-8-16



RAJEEV BATRA
Acting City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

ATTEST:

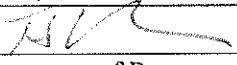

 ROD DIRIDON, JR.
City Clerk

"CITY"

QUESTICA, INC.

A Canadian corporation

Dated: November 7, 2016

By: 
(Signature of Person executing the Agreement on behalf of Contractor)

Name: T.J. Parass

Title: President

Local Address: 980 Fraser Drive, Suite 105
Burlington, Ontario L7L 5P5 Canada

Email Address: tjparass@questica.com

Telephone: (905) 634-0110 x 555

Fax: (866) 520-8514

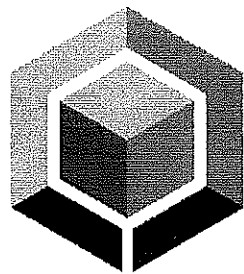
"CONTRACTOR"

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
QUESTICA, INC.**

EXHIBIT A4

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "Questica Budget Hosting Agreement" dated October 28, 2016, which is attached to this Exhibit A4.



Questica **BUDGET**

AMENDMENT to Existing Services **Questica Budget** **Hosting Agreement**

Prepared for

Gill Norris
City of Santa Clara

by

Craig Ross
Questica Inc.

(Hosting to be provided in Canada)

28-October-16



Questica

Questica Budget Hosting Price

Quotation ID#: 28-October-16

Questica Hosting Service Model

Description	Annual
Hosting Service (Canada)	
Annual Subscription (Questica provides server, database, operating system, performance monitoring, software maintenance, disaster recovery, system monitoring)	\$15,000
Total YR1 Hosting Subscription (Annual Fee)	\$15,000
Professional Services (Per Statement of Work)	
Migration from City Environment to Hosting Environment inclusive of ADFS (Estimated at 40 hours' Time and Materials)	Included
Total Professional Services (Estimate Only):	\$7,800
Total Hosting Fees and Estimated Services:	\$22,800
Grand Total- Year 1	\$22,800

Special Notes: The Annual Hosting Fee is inclusive of the \$9,000/yr currently being paid by the City of Santa Clara for Questica "Managed Services". The migration services are an estimate based on similar work completed for other organizations. The City of Santa Clara will only be invoiced for the actual hours incurred which could be more or less than the 40 hours estimated. ADFS will be implemented in conjunction with the provision of the hosted services.

The Hosting Agreement will co-terminate with the Master Agreement dated August 26, 2014.

Pricing valid through: November 15, 2016

- Above pricing in US dollars
- Terms of Payment:
 - Hosting Subscription-
 - Year 1- 100% Due Upon Contract Effective Date (Net 30)
 - Year 2 and Beyond- Due Annually in Advance for Future Years
 - Services:
 - Time and Materials invoiced monthly at a rate of \$185/hr.
- Taxes- Not Applicable to US Clients



Turning Objectives into Outcomes



Agreement General Terms and Conditions

Quotation ID: 28-October-16

General Terms and Information:

Terms of Service: The services and any related software are provided under the Hosting and Service Agreement which is hereby deemed to be fully incorporated into this quotation, whether or not attached hereto. By executing this quotation below, Customer acknowledges a) having been provided a copy of the Hosting and Service Agreement as Exhibit A to this quotation, and b) having read the Hosting and Service Agreement and Agrees to all its terms. Terms, provisions, or conditions on any purchase order, acknowledgement, or other business form or writing that Customer may use in connection with the provision of Services (or software) by Questica will have no effect on the rights, duties, or obligations of the parties hereunder, regardless of any failure of Questica to object to such terms, provisions, or conditions. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

Taxes: The pricing on this quotation is exclusive of all sales, use or other taxes, customs duties and similar levies, if any, payable in or to any jurisdiction or authority whatsoever. Such taxes (other than the taxes on the net income of Questica) shall be the responsibility of the Customer.

Payment: Payment is required in the currency quoted. Unless detailed otherwise in this quotation, Terms are Net-30 days from the later of a) the date of receipt of invoice, or b) the invoice date.

Subscription Fees: This quotation includes Annual Hosting Subscription Services. This service (as detailed in the attached Hosting and Service Agreement) is purchased on an annual basis from the date the Agreement is executed. If payment of the annual fee is not received by Questica before the first business day of the next additional year, Questica's obligation to provide the Subscription services shall be terminated.

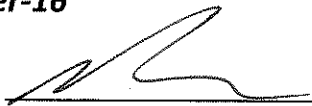
Consulting, Training or Implementation Time Invoicing: Only activities approved in an approved Scope of Work shall be invoiced. A mutually determined change control mechanism will be used to accommodate modifications to the Scope of Work.

Travel Costs: Unless noted otherwise, this quotation does not include any travel, lodging, or on-site expenses. If such travel is required and subsequently authorized, Questica's standard travel and per diem rates shall apply. Air Travel, Rental Car (with associated fuel and parking costs), and Lodging costs shall be reimbursed at cost. Questica is not responsible for unpredictable (including Commercial Airline Travel) delays which may increase travel cost.



Acceptance

Quote ID#: 28-October-16

Authorized Signature: 

Authorized Name: for Gary Ameling

Organization Name: City of Santa Clara

Date: 11/2/16

Upon accepting this offer, please fax back (or scan and email to your Questica representative) all pages of the signed agreement and include an authorized purchase order.

QUESTICA, INC.

Authorized Signature: 

Authorized Name: Allan Booth

Organization Name: Questica, Inc.

Date: 1-Nov-2016





QUESTICA BUDGET HOSTING AGREEMENT

This SUBSCRIPTION HOSTING AGREEMENT (the "Agreement") is made this **October 28, 2016** (the "Effective Date") by and between QUESTICA INC., a corporation incorporated under the laws of Ontario, Canada ("Questica") and the City of Santa Clara, including, without limitation, all its subdivisions, departments, and constituent entities within its legal scope and jurisdiction (collectively, the "Subscriber").

DEFINITIONS Whenever used herein, any schedules, exhibits, or addenda to this Agreement, the following terms shall have the meanings assigned below. Other capitalized terms used in this Agreement are defined in the context in which they are used.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Cloud Computing Service Agreement between City and Contractor, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference between City and Contractor.

"Confidential Information" means any information that a disclosing party treats in a confidential manner and that is marked "Confidential Information" prior to disclosure to the other party. Confidential Information does not include information which: (a) is public or becomes public through no breach of the confidentiality obligations herein; (b) is disclosed by the party that has received Confidential Information (the "Receiving Party") with the prior written approval of the other party; (c) was known by the Receiving Party at the time of disclosure; (d) was developed independently by the Receiving Party without use of the Confidential Information; (e) becomes known to the Receiving Party from a source other than the disclosing party through lawful means; (f) is disclosed by the disclosing party to others without confidentiality obligations; or (g) is required by law to be disclosed

"City" means City of Santa Clara, State of California.

"City Data" includes credentials issued to the City by the Contractor and all records relating to the City's use of Contractor Services and administration of End User accounts, including any Protected Information of City personnel that does not otherwise constitute Protected Information of an End User.

"Data" means all information, whether in oral or written (including electronic) form, created by or in any way originating with City and End Users, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with City and End Users, in the course of using and configuring the Services provided under this Agreement, and includes City Data, End User Data, and Protected Information.

"Data Compromise" means any actual or reasonably suspected unauthorized access to or acquisition of computerized Data that compromises the security, confidentiality, or integrity of the Data, or the ability of City to access the Data.

"Documentation" means, collectively: (a) all materials published or otherwise made available to City by Contractor that relate to the functional, operational and/or performance capabilities of the Services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Contractor that describe the functional, operational and/or performance capabilities of the Services; (c) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by City, and the responses thereto from Contractor, and any document which purports to update or revise any of the foregoing; and (d) the results of any



Contractor "Use Cases Presentation", "Proof of Concept" or similar type presentations or tests provided by Contractor to City.

"Downtime" means any period of time of any duration that the Services are not made available by Contractor to City for any reason, including scheduled maintenance or Enhancements.

"End User" means the individuals (including, but not limited to employees, authorized agents, students and volunteers of City; Third Party consultants, auditors and other independent contractors performing services for City; any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any Services; customers of City provided services; and any external users collaborating with City) authorized by City to access and use the Services provided by Contractor under this Agreement.

"End User Data" includes End User account credentials and information, and all records sent, received, or created by or for End Users, including email content, headers, and attachments, and any Protected Information of any End User or Third Party contained therein or in any logs or other records of Contractor reflecting End User's use of Contractor Services.

"Enhancements" means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that Contractor may develop or acquire and incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers.

"Intellectual Property Rights" includes without limitation all right, title, and interest in and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation-in-part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, and federal law; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, and federal law; and (d) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, and federal law.

"Malicious Code" means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents or programs.

"Order Form" means the documents for placing orders hereunder, including addenda thereto, that are entered into between You and Us from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this agreement as if it were an original party hereto. Order Forms shall be deemed Incorporated herein by reference.

"Protected Information" includes but is not limited to personally identifiable information, student records, protected health information, or individual financial information that is subject to state or federal laws restricted the use and disclosure of such information, including but not limited to the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C and E or Part 164).

"Project Manager" means the individual who shall serve as each party's point of contact with the other party's personnel as provided in this Agreement. The initial Project Managers and their contact information are set forth in the Notices section below and may be changed by a party at any time upon written notice to the other party.

"Purchased Services" means Services that You or Your Affiliates purchased under an Order Form

"Services" means the Contractor's computing solutions, provided over the Internet to the City pursuant to this Agreement, that provide the functionality and/or produce the results described in the Documentation, including without limitation all Enhancements thereto and all interfaces.

"Third Party" means persons, corporations and entities other than the Contractor, the City or any of their employees, contractors or agents.



"Users" means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You, (or by Us at your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

"We," "Us", "Our", "Contractor", "Questica Inc." or "Questica" means the company or entity providing the Services in the Agreement

"You", "Your", "City", "Subscriber" means the company or other legal entity for which you are accepting the Agreement and Affiliates of that company or entity.

"Your Data" means all electronic data or information submitted by You to the Purchased Services.

PURCHASED SERVICES

We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

RIGHTS AND LICENSE IN AND TO CITY AND END USER DATA

The parties agree that as between them, all rights, including all Intellectual Property Rights, in and to City and End User Data shall remain the exclusive property of City, and Contractor has a limited, nonexclusive license to access and use these Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.

All End User Data and City Data created and/or processed by the Services is and shall remain the property of City and shall in no way become attached to the Services, nor shall Contractor have any rights in or to the Data of City.

This Agreement does not give a party any rights, implied or otherwise, to the other's Data, content, or intellectual property, except as expressly stated in the Agreement the City retains the right to use the Services to access and retrieve City and End User Data stored on Contractor's Services infrastructure at any time at its sole discretion.

DATA PRIVACY

Contractor will use City Data and End User Data only for the purpose of fulfilling its duties under this Agreement and for City's and its End User's sole benefit, and will not share such Data with or disclose it to any Third Party without the prior written consent of City or as otherwise required by law. By way of illustration and not of limitation, Contractor will not use such Data for Contractor's own benefit and, in particular, will not engage in "data mining" of City or End User Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by City.

Contractor will provide access to City and End User Data only to those Contractor employees, contractors and subcontractors ("Contractor Staff") who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to the Data, to the best of the Contractor's knowledge, staff assigned to this project shall not have a criminal record. Staff who perform work under this Agreement have successfully completed annual instruction of a nature sufficient to enable them to effectively



comply with all Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

DATA SECURITY AND INTEGRITY

All facilities used to store and process City and End User Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to secure such Data from unauthorized access, destruction, use, modification, or disclosure. Such measures will be no less protective than those used to secure Contractor's own Data of a similar type, and in no event less than reasonable in view of the type and nature of the Data involved.

Contractor warrants that all City Data and End User Data will be encrypted in transmission (including via web interface) and in storage at a level equivalent to or stronger than 128-bit level encryption.

Contractor shall at all times use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to anti-virus and anti-malware protections and intrusion detection and reporting in providing Services under this Agreement.

Prior to the Effective Date of this Agreement, Contractor will at its expense conduct or have conducted the following, and thereafter, Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Data Compromise:

- An audit of Contractor's security policies, procedures and controls;
- A vulnerability scan, performed by a Third Party scanner, of Contractor's systems and facilities that are used in any way to deliver Services under this Agreement; and,
- A formal penetration test, performed by a process and qualified personnel, of Contractor's systems and facilities that are used in any way to deliver Services under this Agreement.
- The same will be evidenced by providing the City a copy of the Successful Audit Letter and a Scope of Audit Document (outlining what is included in the audit). Audit Report will not include "private" information, defined as proprietary environment/infrastructure detail not specific to systems that process or transmit City data.
- Additionally, Contractor will make the City environment available at any time for a full audit by the City at the City's expense.

Contractor will provide City the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of Contractor's receipt of such results.

Based on the results of the above audits, certifications, scans and tests, Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures in order to meet its obligations under this Agreement, and provide City with written evidence of remediation.

City may, at its expense, require the Contractor to perform additional audits and tests, the results of which will be provided to City within seven (7) business days of Contractor's receipt of such results.



Contractor shall protect City and End User Data against deterioration or degradation of Data quality and authenticity, including, but not limited to annual Third Party Data integrity audits. Contractor will provide City the results of the above audits, along with Contractor's

RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA

Except as otherwise expressly prohibited by law, Contractor will:

If required by a court of competent jurisdiction or an administrative body to disclose City and/or End User Data, Contractor will notify City in writing immediately upon receiving notice of such requirement and prior to any such disclosure;

Consult with City regarding its response;

Cooperate with City's reasonable requests in connection with efforts by City to intervene and quash or modify the legal order, demand or request; and

Upon City's request, provide City with a copy of its response.

If City receives a subpoena, warrant, or other legal order, demand or request seeking City or End User Data maintained by Contractor, City will promptly provide a copy to Contractor. Contractor will supply City with copies of Data required for City to respond within forty-eight (48) hours after receipt of copy from City, and will cooperate with City's reasonable requests in connection with its response.

DATA COMPROMISE RESPONSE

Contractor shall report, either orally or in writing, to City any Data Compromise involving City or End User Data, or circumstances that could have resulted in unauthorized access to or disclosure or use of City or End User Data, not authorized by this Agreement or in writing by City, including any reasonable belief that an unauthorized individual has accessed City or End User Data. Contractor shall make the report to City immediately upon discovery of the unauthorized disclosure, but in no event more than forty-eight (48) hours after Contractor reasonably believes there has been such unauthorized use or disclosure. Oral reports by Contractor regarding Data Compromises will be reduced to writing and supplied to City as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.

Immediately upon becoming aware of any such Data Compromise, Contractor shall fully investigate the circumstances, extent and causes of the Data Compromise, and report the results to City and continue to keep City informed on a daily basis of the progress of its investigation until the issue has been effectively resolved.

Contractor's report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the City or End User Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.



Within five (5) calendar days of the date Contractor becomes aware of any such Data Compromise, Contractor shall have completed implementation of corrective actions to remedy the Data Compromise, restore City access to the Services as directed by City, and prevent further similar unauthorized use or disclosure.

Contractor, at its expense, shall cooperate fully with City's investigation of and response to any such Data Compromise incident.

Except as otherwise required by law, Contractor will not provide notice of the incident directly to the persons whose Data were involved, regulatory agencies, or other entities, without prior written permission from City.

Notwithstanding any other provision of this agreement, and in addition to any other remedies available to City under law or equity, Contractor will promptly reimburse City in full for all costs incurred by City in any investigation, remediation or litigation resulting from any such Data Compromise, including but not limited to providing notification to Third Parties whose Data were compromised and to regulatory bodies, law-enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Compromise in such a fashion that, in City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Data Compromise.

DATA RETENTION AND DISPOSAL

Contractor will retain Data in an End User's account, including attachments, until the End User deletes them or for the time period mutually agreed to by the parties in this Agreement.

Using appropriate and reliable storage media, Contractor will regularly backup City and End User Data and retain such backup copies for a minimum of twelve (12) months.

At the City's election, Contractor will either securely destroy or transmit to City repository any backup copies of City and/or End User Data. Contractor will supply City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used.

Contractor will retain logs associated with End User activity for a minimum of twelve (12) months.

Contractor will immediately place a "hold" on Data destruction or disposal under its usual records retention policies of records that include City and End User Data, in response to an oral or written request from City indicating that those records may be relevant to litigation that City reasonably anticipates. Oral requests by City for a hold on record destruction will be reduced to writing and supplied to Contractor for its records as soon as reasonably practicable under the circumstances. City will promptly coordinate with Contractor regarding the preservation and disposition of these records. Contractor shall continue to preserve the records until further notice by City.

DATA TRANSFER UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, Contractor will ensure that all City and End User Data are securely transferred to City, or a Third Party designated by City, within thirty (30) calendar days. Contractor will ensure that such migration uses facilities and methods that are compatible with the relevant systems of City,



and that City will have access to City and End User Data during the transition. In the event that it is not possible to transfer the aforementioned data to City in a format that does not require proprietary software to access the data, Contractor shall provide City with an unlimited use, perpetual license to any proprietary software necessary in order to gain access to the data.

Contractor will provide City with no less than ninety (90) calendar days notice of impending cessation of its business or that of any Contractor subcontractor and any contingency plans in the event of notice of such cessation. This includes immediate transfer of any previously escrowed assets and Data and providing City access to Contractor's facilities to remove and destroy City-owned assets and Data.

Contractor will provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to City.

Contractor shall implement its contingency and/or exit plans and take all necessary actions to provide for an effective and efficient transition of service with minimal disruption to City. Contractor will work closely with its successor to ensure a successful transition to the new service and/or equipment, with minimal Downtime and effect on City, all such work to be coordinated and performed no less than ninety (90) calendar days in advance of the formal, final transition date.

SERVICE LEVELS. See Appendix A.

INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE. See Appendix A

INSTITUTIONAL BRANDING. Contractor Services will provide reasonable and appropriate opportunities for City branding of Contractor Services. Each party shall have the right to use the other party's Brand Features only in connection with performing the functions provided in this Agreement and as specified in the attached Plan. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in and to those features. Contractor may not advertise that City is a client, list City as a reference or otherwise use City's name, logos, trademarks, or service marks without prior written permission obtained from City personnel authorized to permit City brand use.

COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES. Contractor will comply with all applicable laws in performing Services under this Agreement. Any Contractor personnel visiting City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. City will provide copies of such policies to Contractor upon request.

WARRANTIES, REPRESENTATIONS AND COVENANTS

Services Warranty. Contractor represents and warrants that the Services provided to City under this Agreement shall conform to, be performed, function, and produce results substantially in accordance with the Documentation. Contractor shall offer City warranty coverage equal to or greater than the Contractor's standard warranty policy.

Contractor's obligations for breach of the Services Warranty shall be limited to using its best efforts, at its own expense, to correct or replace that portion of the Services which fails to conform to such warranty, and, if Contractor is unable to correct any breach in the Services Warranty by the date which is sixty (60) calendar days after City provides notice of such breach, City may, in its sole discretion, either extend the time for Contractor to cure the breach or terminate this Agreement.

Disabling Code Warranty. Contractor represents, warrants and agrees that the Services do not contain and City will not receive from Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including



surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or Data (a "Disabling Code").

In the event a Disabling Code is identified, Contractor shall take all steps necessary, at no additional cost to City, to: (a) restore and/or reconstruct any and all Data lost by City as a result of Disabling Code; (b) furnish to City a corrected version of the Services without the presence of Disabling Codes; and, (c) as needed, re-implement the Services at no additional cost to City. This warranty shall remain in full force and effect as long as this Agreement remains in effect.

Intellectual Property Warranty. Contractor represents, warrants and agrees that: Contractor has all Intellectual Property Rights necessary to provide the Services to City in accordance with the terms of this Agreement; Contractor is the sole owner or is a valid licensee of all software, text, pictures, audio, video, logos and copy that provides the foundation for provision of the Services, and has secured all necessary licenses, consents, and authorizations with respect to the use of these underlying elements; the Services do not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any Third Party; and there is currently no actual or threatened suit against Contractor by any Third Party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

Warranty of Authority. Each party represents and warrants that it has the right to enter into this Agreement. Contractor represents and warrants that it has the unrestricted right to provide the Services, and that it has the financial viability to fulfill its obligations under this Agreement. Contractor represents, warrants and agrees that the Services shall be free and clear of all liens, claims, encumbrances or demands of Third Parties. Contractor represents and warrants that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Services. This warranty shall survive the expiration or termination of this Agreement.

Third Party Warranties and Indemnities. Contractor will assign to City All Third Party warranties and indemnities that Contractor receives in connection with any products provided to City. To the extent that Contractor is not permitted to assign any warranties or indemnities through to City, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of City to the extent Contractor is permitted to do so under the terms of the applicable Third Party agreements.

Date/Time Change Warranty. Contractor represents and warrants to City that the Services provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. Contractor must repair any date/time change defects at Contractor's own expense.

Compliance With Laws Warranty. Contractor represents and warrants to City that it will comply with all applicable laws, including its tax responsibilities, pertaining to the Agreement and its provision of the Services to City.

THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

CONFIDENTIALITY

Each party acknowledges that certain information that it shall acquire from the other is of a special and unique character and constitutes Confidential Information.



The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing party. However: (a) either party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information if so required by law (including court order or subpoena). Nothing in this Agreement shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other Information provided to City are subject to applicable state and federal law, including the Washington State Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.

Nothing in this Agreement shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to City are subject to applicable state and federal law, including the Washington Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.

PROTECTED INFORMATION. During the course of this Agreement, should Contractor come into possession of any Protected Information, Contractor may not disclose this information to any Third Party under any circumstances.

HOSTING AND SUPPORT SERVICES TO BE PERFORMED:

The Contractor is ready, willing, and able to provide the services required by this Agreement.

The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

User ID Credentials. Internal corporate or customer (tenant) user account credentials shall be restricted as per the following, ensuring appropriate identity, entitlement, and access management and in accordance with established policies and procedures:

- Identity trust verification and service-to-service application (API) and information processing interoperability (e.g., SSO and Federation)
- Account credential lifecycle management from instantiation through revocation
- Account credential and/or identity store minimization or re-use when feasible
- Adherence to industry acceptable and/or regulatory compliant authentication, authorization, and accounting (AAA) rules (e.g., strong/multi-factor, expireable, non-shared authentication secrets)

Vendor Supported Releases. The provider shall maintain the currency all third-party software used in the development and execution or use of the software including, but not limited to: all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jquery plugins,



etc.), whether commercial, free, open-source, or closed-source; with third-party vendor approved and supported releases.

GRANT OF LICENSE; RESTRICTIONS:

Contractor hereby grants to City a right and license to: (a) display, perform, and use the Software Hosting; and (b) use all intellectual property rights necessary to use the Software Hosting as authorized in subparagraph (a).

Title to and ownership of the Software will remain with Contractor. City will not reverse engineer or reverse compile any part of the Software. City will not remove, obscure or deface any proprietary notice or legend contained in the Software or documentation without Contractor's prior written consent.

DELIVERY AND ACCEPTANCE:

Upon set up of the Software Hosting, the City will test and evaluate same to ensure that it conforms, in the City's reasonable judgment, to the specifications outlined in Appendix A. If the Software does not conform, the City will so notify Contractor in writing within sixty (60) days. Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency. The foregoing procedure will be repeated until the City accepts or finally rejects the product, in whole or part, in its sole discretion. In the event that the Software Hosting does not perform to the City's satisfaction, the City reserves the right to repudiate acceptance. In the event that the City finally rejects the Software Hosting, or repudiates acceptance of it, Contractor will refund to the City all fees paid, if any, by the City with respect to the rejected product.

If the City is not satisfied with the Contractor's performance of the services described in Appendix A, the City will so notify Contractor within thirty (30) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the service in its sole discretion. In the event that City finally rejects any service, Contractor will refund to City all fees paid by City with respect to such service.

TERM: The term of the Agreement is from October 4, 2016 through August 25, 2018 but may be terminated early in conjunction with the termination of the Master Agreement that was executed on August 26th, 2014.

COMPENSATION AND PAYMENT:

Fee: The fee for the hosting services described in the Questica Budget Hosting Quote is \$15,000. In addition to the cost for the hosting service, the cost to migrate from the current City infrastructure to the hosting environment is estimated at \$7,800. (40 hours @185/hr.) The migration services will be invoiced monthly on a time and materials basis. These costs shall be paid pursuant to the City's financial policies and in accordance with the Price Quote.

Reimbursement Expenses: The costs specified above include all expenses, and no other expenses shall be separately reimbursed hereunder unless by agreed-upon amendment to this contract.

Invoicing: Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's financial policy.

Annual Increases: The maximum allowable annual increase to the hosting fees paid in the prior year is 5%.



STATUS OF CONTRACTOR: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City for any purpose whatsoever.

TERMINATION:

The City has the right to terminate the Agreement with cause upon written notice and the expiration of a 10-day Contractor cure period, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

There will be no refund for any prepaid fees in the event of termination without cause. This specifically means that prepaid annual hosting fees will not be refunded if the agreement is terminated without cause prior to the end date of the then current hosting subscription year.

WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

REPRESENTATION AND WARRANTY: Contractor represents and warrants that:

- o All services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;
- o all services will conform to applicable specifications and the Appendices attached hereto;
- o it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party;
- o there are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any third party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;
- o the Software will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party;
- o the Software will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data; and the media on which all Software is furnished are and will be, under normal use, free from defects in materials and workmanship.



DEFENSE AND INDEMNIFICATION:

Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

Contractor will, at Contractor's expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) arising out of a claim that the Software, services, or their use by the City, infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party. The City will promptly notify Contractor in writing of any claim and cooperate with Contractor and its legal counsel in the defense thereof. Contractor may in its discretion (i) contest, (ii) settle, (iii) procure for the City the right to continue using the Software, or (iv) modify or replace the infringing Software so that it no longer infringes (as long as the functionality and performance are not degraded as reasonably determined by the City).

TAXES, CHARGES AND PENALTIES: The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under Washington State laws.

ASSIGNMENT; SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.



NO AUTHORITY TO BIND CITY TO CONTRACTS: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with City Ordinances and Codes.

AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

CONFLICT OF INTEREST:

No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City of Santa Clara Personnel Policies.

The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid.

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

DISPUTES: Differences between the Contractor and the City, arising under and by virtue of this contract, shall be resolved at the lowest possible level in order that such matters may be settled or other appropriate action promptly taken. Any dispute shall first be addressed by the City and Contractor Project Manager; then escalated if necessary to Senior Managers before finally going to the Contractor CEO and City Manager. If unable to resolve, either party may seek injunctive relief. Project work shall continue during the period of dispute. The City retains the right to accept work products as stated in the Statement of Work.

GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the Province of Ontario. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the court of competent jurisdiction in the County of Halton, Province of Ontario, Canada.



NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

CONFIDENTIAL INFORMATION; OPEN RECORDS:

City Information: Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Washington Public Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

Use and protection of Proprietary Data or Confidential Information:

Except as expressly provided by the terms of this Agreement, Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the Internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any data, including Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Contractor further acknowledges that by providing data, Proprietary Data or confidential information, the City is not granting to Contractor any right or license to use such data except as provided in this Agreement. Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or confidential information without written authorization from the Manager and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

Contractor agrees, with respect to the Proprietary Data and confidential information, that: (1) Contractor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

Employees and Sub-Contractor: Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. Contractor shall not disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an "as is" basis, without any support whatsoever, and without representation;



warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Contractor agrees to contact the City immediately.

LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the Appendices, the language of the Agreement controls.

SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any Appendices and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

INUREMENT: The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, Contractors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.

PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City of Santa Clara.



COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

LIMITATION OF LIABILITY: CONTRACTOR'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE AMOUNT PAID BY THE CITY IN THE FIRST TWELVE MONTHS OF THE AGREEMENT

EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES: IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

END OF SUBSCRIPTION HOSTING AGREEMENT DOCUMENT



APPENDIX A

Service Levels

The City's expectation is that if City personnel experience a system problem, they will call the City's internal help desk to log an incident. The help desk will notify the on call support analyst who will attempt to determine if the problem is caused by the internal infrastructure (e.g. server down, network down, pc problem) and forward to the application service provider if the problem resides with the application.

If the issue is identified to be an issue with the software, the City's system support will contact the Contractor. The Contractor will respond to Support Calls according to the following Service Levels:

Service Level	Service Response Time	Resolution Status Update Frequency	Service Resolution Time Goal
Emergency	Less than 30 min	Every 30 minutes	Less than 30 min
High	1 hour	Every 2 hours	Within 2 hours
Medium	2 hours	Every 48 hours	Within 5 Business days
Low	8 hours	Every 10 Business Days	Within 30 Business Days

Service Response time refers to the maximum elapsed time after problem logged for investigation and action by the Contractor. The Contractor will communicate with the City's internal software support, providing an action plan.

Resolution Status Update Frequency refers to the maximum time elapsed after problem has been initially logged before a status update is provided to the City. The Contractor will continue to provide status updates to the City within this frequency interval until such time as the problem is resolved.

Service Resolution time goal refers to the objective for the maximum elapsed time after problem is logged for some sort of problem resolution to be provided.

Service Levels will be determined in accordance with the following:

Emergency

- System down during critical support times for Budgeting

High

- System down (Software Application)
- Inability to do budgeting
- Program errors without workarounds
- Incorrect calculation errors impacting records
- Performance issues of severe nature impacting critical processes
- Reports calculation issues
- Security breaches and other security issues

Medium



- System errors that have workarounds
- Performance issues not impacting critical processes
- Usability issues

Low

- Report formatting
- Aesthetic issues
- Recommendations for enhancements on system changes

Questica will make every effort to provide a problem resolution within the stated Service Resolution time goal.

Help Desk Services/ Customer Service and Technical Support

The City has a central help desk for all employee user applications. The central help desk acts as the first point of contact and brokers support requests that are not readily resolved with a scripted solution.

Recovery Point Objective

The solution RPO (Recovery Point Objective) data loss threshold as follows:

Month	Length In Hours	
	7am to 8pm PT	8pm to 7am PT
January	0.1	0.15
February	0.1	0.15
March	0.1	0.15
April	0.1	0.15
May	0.1	0.15
June	0.1	0.15
July	0.25	0.5
August	0.25	0.5
September	0.25	0.5
October	0.25	0.5
November	0.25	0.5
December	0.25	0.5

Recovery Time Objective

The solution should have an RTO (Recovery Time Objective – tolerance to service interruptions) as follows:

Month	Length In Hours	
	7am to 8pm PT	8pm to 7am PT
January	0.25	1
February	0.25	1
March	0.25	1
April	0.25	1
May	0.25	1



June	0.25	1
July	0.5	2
August	0.5	2
September	0.5	2
October	0.5	2
November	0.5	2
December	0.5	2

Service Guarantee

Questica, via AEGISYS, will provide a 99.9% IP connectivity to the Internet within AEGISYS's network.

AEGISYS will also provide 99.9% web server availability and 99.8% database availability within AEGISYS's network on a 24/7 basis outside of scheduled maintenance windows.

Availability will be calculated per calendar quarter, as follows:

$$\left[\left(\frac{\text{total} - \text{nonexcluded} - \text{excluded}}{\text{total} - \text{excluded}} \right) * 100 \right] \geq 99\%$$

Where:

- 1) Total means the total number of minutes in the calendar quarter;
- 2) Non excluded means downtime that is not excluded; and
- 3) Excluded means:
 - a) Any planned downtime of which Questica gives 24 or more hours notice in accordance with the Agreement or via a conspicuous on-screen message in Questica Budget. Questica will use commercially reasonable efforts to schedule all planned downtime during the hours from 6:00 p.m. Friday to 3:00 a.m. Monday, U.S. Pacific Time.
 - b) Any period of unavailability lasting less than 15 minutes.
 - c) Any unavailability caused by circumstances beyond Questica's reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Questica employees), denial- of-service attacks, or third-party Internet service provider failures or delays. For any partial calendar quarter during which the City subscribes to Questica Budget, availability will be calculated based on the portion for which the City subscribed.

Remedies



Should Questica fail to make Questica Budget available as set forth above in a calendar quarter, the City may continue to use Questica Budget but receive a refund for one full day of subscription fees for each active subscription on the Production Questica Budget instance in that quarter, for each full or partial hour of Questica Budget unavailability below the percentage specified above. In no case shall the total refund for any quarter exceed 25% of the subscription fees paid by the City for such quarter. Should Questica fail to make Questica Budget available as set forth above in two consecutive calendar quarters, the City may, in lieu of receiving the above-described refund for the second quarter, terminate the Agreement by providing notice of termination, in which case Questica will refund to Customer any prepaid fees for the remainder of Questica Budget subscription term(s) following the date of termination.

Monitoring

Questica, via AEGISYS, uses a variety of tools to monitor (i) the availability and performance of the Customer's production services environment and (ii) the operation of the of infrastructure and network components.

Monitored Components

Questica, via AEGISYS, monitors all levels of the service infrastructure, and currently generates alerts for CPU, memory, storage, database, network components, and transactions. Questica's Operations staff attends to any automated warnings and alerts associated with deviations of the environment from Questica defined monitoring thresholds, and follows standard operating procedures to investigate and resolve underlying issues.

