

**MASTER SERVICE AGREEMENT**  
**FOR INFORMATION TECHNOLOGY OUTSOURCING SERVICES**  
**BY AND BETWEEN**  
**CITY OF SANTA CLARA**  
**AND**  
**UNISYS CORPORATION**

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**THIS MASTER SERVICE AGREEMENT** ("Agreement" and "MSA") is entered into as of January 1, 2026 ("Effective Date") by and between the City of Santa Clara, California, a chartered California municipal corporation and its affiliated local agencies with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City" and "Customer"); and Unisys Corporation, a Delaware corporation, with its principal place of business located at 801 Lakeview Drive, Suite 100, Blue Bell, Pennsylvania 19422 ("Service Provider" and "Contractor"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**WHEREAS**, in response to Customer's request to provide certain information technology outsourcing services to Customer ("Request for Proposal"), Service Provider submitted its proposal to provide information technology outsourcing services to Customer ("Proposal"); and

**WHEREAS**, Service Provider has represented that it is a competent, qualified, and experienced provider of IT services of the type required by this Agreement, and has advised City that it can fulfill and satisfy the requirements of this Agreement.

**WHEREAS**, based on the Proposal, Customer and Service Provider have engaged in extensive negotiations and discussions that have culminated in the formation of the relationship described in this Agreement with respect to the information technology outsourcing services in order to:

Create advantage for Customer and Customer's end-users through the outsourcing of the Services (as defined below), achieve best-in-class standards and sustain and enhance such standards through continuous improvement; and,

Improve Service Levels through regular assessment and reviews of all processes and procedures for the performance of the Services, and improve overall productivity to provide significant value to Customer.

**NOW THEREFORE**, the Parties hereby agree as follows:

**1. INTERPRETATION**

1.1 Defined Terms. The defined terms used in this Agreement will have the meanings set forth in Schedule 1 or stated where they first appear, unless the context clearly requires otherwise.

1.2 Reference to Statutes. A reference to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 Headings. Headings are in this Agreement for ease of reference only and will not affect the interpretation or construction of this Agreement.

1.4 Interpretation. The recitals above are (i) intended as a general statement of purposes for this Agreement; and (ii) are not intended to expand or contract the scope of the Parties' obligations or to alter the plain meaning of this Agreement's terms and conditions. However, the Parties do intend that the Agreement be interpreted and performed in a manner consistent with these objectives.

1.5 Section References. References to Articles, Sections, Schedules and Appendices are, unless otherwise provided, references to articles, sections, schedules and appendices to this Agreement.

1.6 [RESERVED].

1.7 Waiver of Presumption. The Parties are sophisticated and have been represented by counsel during the negotiation of this Agreement. As a result, any presumption or rules of construction

relating to the interpretation of contracts against the drafter thereof should not apply. The Parties hereby waive any such presumption or rule.

## **2. AGREEMENT STRUCTURE**

2.1 General. This Agreement sets out the Parties' agreement as to the provision of Services from Service Provider to Customer.

2.2 [RESERVED].

2.3 [RESERVED].

2.4 Order of Precedence. This Agreement, all Schedules thereto, will be construed to be consistent, insofar as reasonably possible. In the event of any conflict between the provisions of the Master Service Agreement, the Schedules thereto, the conflict will be resolved in accordance with the following order of precedence: first, the Master Service Agreement; and second, the Master Service Agreement Schedules; provided, however, that any specific description of any service or other performance obligation in any Schedule will supersede any inconsistent general reference in the relevant agreement.

2.5 Amendment, Modification. This Agreement may only be amended, varied or modified by further written agreement of authorized representatives of Service Provider and Customer. Any such amendment, variation or modification will be binding upon both Parties.

2.6 [RESERVED].

2.7 [RESERVED].

2.8 [RESERVED].

2.9 [RESERVED].

## **3. SCOPE OF SERVICES**

3.1 Services. Commencing on the effective date of each Service, whether under this Agreement and its Schedules, and continuing throughout the term of said agreements, Service Provider will be responsible for providing to Customer:

3.1.1 The tasks, services, functions and responsibilities described in this Agreement (the services, functions and responsibilities described in the Schedule 3, Service Description, attached hereto), or in any of the other associated Schedules, Appendices or other documents attached to this Agreement and incorporated herein by reference.

3.1.2 Any services, functions or responsibilities not specifically described in this Agreement, but which are inherent in or necessary for the proper performance and delivery of the Services and not otherwise expressly excluded by the Parties;

3.1.3 Other miscellaneous activities related to the Services that Customer may request from time to time that do not require additional resources or affect Service Levels or other agreed performance standards, within standard business hours as referenced in Schedule 5 Section 5.4; and

3.1.4 If any functions not specifically described in this Agreement are required, necessary or customary for, or incidental or ancillary to, the proper performance and provision of the Services in accordance with the requirements of this Agreement (including the performance standards), such functions will be deemed to be implied by and included within the scope of the

Services (and provided to Customer at no additional charge) to the same extent and in the same manner as if expressly described in this Agreement.

3.2 Project Services. The Services contain certain Project Services. Personnel assigned to perform Project Services will possess the training, education, skills and competence necessary to perform their assigned responsibility. When Service Provider proposes additional staff or resources for Project Services, Customer, at its option, may: (i) temporarily relieve Service Provider of Service Level obligations, so that Services may be performed with available staff or resources, without additional Charges or undue impact upon operations or user satisfaction; or (ii) authorize additional staff and resources, for which Customer will pay based on approved contract rate card, or (iii) adjust against any available credits to the Customer. There will be no additional charge for Project management performed by Service Provider personnel ordinarily assigned to performance of Services for Customer.

3.3 Location of Services. All Services will be provided by the Service Provider either at Customer premises or from the Service Provider Service Location(s) or remote, as specified in Schedule 15. Customer disclaims all responsibility for oversight of such remote personnel, and compliance with any and all laws applicable to such remote personnel. Service Provider warrants compliance with all applicable laws, regulations, and directives (including but not limited to Executive Orders) with relation thereto.

3.4 Reports. Service Provider will provide to Customer, the monthly and other periodic reports concerning Service Provider's service and performance specified in Schedule 7, Reports. Additional reporting requirements and change procedures related to reporting are specified in Schedule 17, Governance and Service Provider Key Personnel. Periodic reports may be based upon Service Provider's standard forms of reports to its customers, if they provide the information that Customer reasonably requires or the reporting shall be based on the format mutually agreed upon by the Parties. Reporting requirements will contain read-only online access for responsible Customer management to tools used to manage delivery of service (e.g., "dashboards" for Service Level performance, trouble-ticket systems). Service Provider will provide, implement and customize all tools and procedures required for reporting Service Levels at no additional cost to Customer.

3.5 [RESERVED].

3.6 Out-of-Scope Services and New Services. Customer may from time to time request that Service Provider perform an Out-of-Scope Service and New Services. Within ten (10) business days of Customer's request, or such other time period mutually agreed upon by the Parties, Service Provider will provide Customer with a written proposal for such Out-of-Scope Service or New Services that will address (i) a description of the services, functions and responsibilities Service Provider anticipates performing in connection with such Out-of-Scope Service or New Services; (ii) a schedule for commencing and completing such Out-of-Scope Service or New Services with commencement not later than thirty (30) days after Customer's approval (if any) of such Out of Scope Service or New Services, unless otherwise mutually agreed by the Parties; (iii) Service Provider's prospective fixed price Fees for such Out-of-Scope Service or New Services, with a detailed breakdown of such Fees; (iv) a description of any new software or hardware to be provided by Service Provider in connection with such Out-of-Scope Service or New Services; and (v) such other information as may be requested by Customer.

The proposal shall constitute Service Provider's firm offer, irrevocable for ten (10) business days (or such longer period as required by such proposal, the "Response Period"), to perform such services as described in such proposal upon the terms and conditions set forth therein. Prior to the expiration of the Response Period, Customer shall notify Service Provider in writing if Customer elects to accept Service Provider's proposal and proceed with implementation of the Out-of-Scope Service or New Services upon the terms and conditions set forth therein (any such notice, a "Notice to Proceed"). In the event City Council approval is required for the Out-of-Scope Service or New Services, Customer shall notify Service Provider, prior to the expiration of the Response Period, of its intent to seek such approval and Service Provider's firm offer shall remain pending and irrevocable for sixty (60) days or for such other time period as mutually agreed upon by the Parties. Following City Council review, Customer shall either issue a

Notice to Proceed or instruct Service Provider not to proceed. If, within the Response Period, Customer gives notice to Service Provider not to proceed, or fails to give any notice to Service Provider, then Provider's proposal shall be deemed rejected and the proposal for the Out-of-Scope Service or New Services shall be deemed withdrawn, and Service Provider shall take no further action with respect to either. Upon Customer's issuance of a Notice to Proceed as described above, Service Provider's proposal shall be deemed accepted by Customer and the terms and conditions thereof (as modified by written mutual agreement of the Parties in negotiations prior to issuance of such Notice to Proceed) shall be deemed to constitute such Out-of-Scope Service or New Services.

3.6.1 Service Provider will not begin performing any Out-of-Scope Service or New Services unless and until the Change has been approved in accordance with the Change Control Procedures (as defined in Section 4.6).

3.6.2 If Changes can be effected or Out-of-Scope Services or New Services performed with the resources available for performance of the Services, there will be no adjustment in Service Provider's Fees (other than through normal operation of charging metrics for additional or reduced consumption of chargeable resources). Service Provider's Fees for Out-of-Scope Services or New Services involving net additional or reduced resources will be at the rates specified in Schedule 5, Fees, unless there is no applicable fee specified for the type of Out-of-Scope Service or New Services requested and the Fees specified cannot reasonably be applied, in which case Service Provider's Fees for Out-of-Scope Services or New Services will be no higher than the fees that Service Provider then offers to its most favored customers.

3.6.3 The Parties will consider in good faith opportunities for gain-sharing with respect to Out-of-Scope Services or New Services.

3.7 Customer Performance of Services. This is a non-exclusive Agreement. Customer has the right to perform itself, over the Initial Term, or retain third parties to perform, any of the Services or the Out-of-Scope Services or New Services. To the extent Customer performs any of the Services or the Out-of-Scope Services or New Services itself, or retains third parties to do so, Service Provider will cooperate with Customer or such third parties as reasonably required to transition such Services to Customer or Customer's retained third parties. Service Provider's obligation to cooperate is subject to any third party agreement to the confidentiality restrictions that this Agreement imposes on Customer, and such cooperation will respect Service Provider's and Customer's commitments to contractual restrictions and obligations imposed by third party suppliers. In the event Customer reduces the Services pursuant to this Section, the Fees will be adjusted in accordance with applicable charging metrics and, if no such metric applies, the Change Control Procedures, to reflect the reduced scope of Services being provided by the Service Provider.

3.8 Business Continuity and Disaster Recovery. Service Provider will provide the business continuity services and disaster recovery services as specified in Schedule 23, Disaster Recovery Plan, and that are specified in the applicable Service Description and Procedures Manual. In the event of a disaster, personnel ordinarily assigned to the performance of Services for Customer under this Agreement will, at Customer's request, be made available to perform business continuity and disaster recovery services in cooperation with Customer. Service Provider will be excused from all SLAs impacted by such Customer requested personnel reallocation.

3.9 Excuse from Performance. Except as otherwise required under this Agreement and the Schedules, in addition to the excused performance contemplated under Section 24 (Force Majeure), Service Provider will be excused from failures to achieve the Critical Transition Milestones, perform the Services, meet or exceed the Service Levels in this Agreement to the extent that (i) Customer fails to perform the retained services or obligations identified in the Service Description under this Agreement; or, (ii) such failure or other acts or omissions of Customer or its agents (not undertaken at Service Provider's direction or with Service Provider's consent) directly contributes to or causes Service Provider's failure to perform; or, (iii) a third-party, who is not an Approved Subcontractor as listed in Schedule 18 (Approved Subcontractors) fails to perform its obligations; provided, however, that Service Provider must (a) give Customer prompt notice of Customer's failure to perform such retained

services resulting in such performance failure, (b) use its reasonable efforts to continue to perform despite Customer's failure to perform retained services and (c) use its reasonable efforts to mitigate the adverse consequences of Customer's failure to perform such retained services.

3.10 Additional Services. Other California local governmental bodies may be eligible upon mutual agreement between Customer and Service Provider to participate in this Agreement pursuant to the terms and conditions of the Agreement for the purchase of like services if such bodies are authorized, by law or their governing bodies, to execute such purchases, and if such authorization is allowed by Customer.

#### 4. **OPERATION**

4.1 Service Locations. The Services will be provided to Customer from the Service Locations as specified in Schedule 15, Service Locations, at the locations specified in Schedule 15, and any other location for which Service Provider has received Customer's approval.

4.1.1 [RESERVED].

4.1.2 [RESERVED].

4.1.3 Service Provider will bear any costs of transition occasioned by Service Provider's relocation of Services as a result of changes in Law where the change in location is not addressed in Schedule 15 or otherwise requested by Customer. If any change in Law requires Customer's relocation of Services, Customer will bear any costs of transition occasioned by such relocation.

4.1.4 Any change in the location where the Services are performed during the term of this Agreement must be approved in advance and in writing by Customer in accordance with the Change Control Procedures in Schedule 14 (Change Control Procedures). Customer will not unreasonably withhold or delay consent, but Customer may condition its consent upon reasonable assurances of timely performance without any material disruption or interruption of the Services, such as approval and performance of a mutually agreed migration plan. Customer will have the right to withhold consent if a change in Service Location results in Services being performed from a location outside the United States.

4.1.5 Any relocation of operations undertaken for Service Provider's convenience will be undertaken in accordance with the Change Control Procedures in Schedule 14 (Change Control Procedures), at Service Provider's expense (such as, reimbursement of Customer's reasonable, actual costs related to relocation, payment of any and all taxes attributable to relocation, taxes, or increases in taxes upon the Services, and reimbursement of any additional, continuing costs related to relocation).

4.1.6 In the event that any change pursuant to Section 4.1.5 above has a material increase on the Fees, Customer will not bear or be charged or be responsible for any additional one-time or ongoing expenses or Fees as a result of the relocation of Services. Customer will have the right to terminate this Agreement upon notice to Service Provider, without any obligation to pay any Termination for Convenience Fees or other amounts if the Service Location change has material impact on Fees.

4.2 English Language. All records and invoices will be maintained in and all oral and written communications (including without limitation meetings, telephone calls, reports, notices and conferences) will be conducted exclusively in the English language. Unless otherwise agreed in writing, all Service Provider personnel, including Key Personnel, will be fluent in the English language (or the language of those with whom they interact), and those who interact with Customer employees, customers and vendors must be readily understandable to those employees.



4.3 Customer Architecture, Policies and Procedures. In providing the Services to Customer, Service Provider must adhere to Customer's information management technical architecture, standards, guidelines, policies and procedures, Customer's applicable internal controls as they may be modified and communicated in writing to Service Provider by Customer prior to Effective Date provided, however, that if Customer modifies its technical architecture in a manner that requires Service Provider to acquire new hardware, software or other resources that materially increases Service Provider's costs above what had been planned and such is not a scheduled update or upgrade to the existing Software or hardware used to provide the Services, the modification will be considered a Change that is subject to the Change Control Procedure in Schedule 14 (Change Control Procedures). Except as provided in this Article 4.3 adjustments in Services in accordance with this Section will be deemed to be within the scope of the Services to the same extent and in the same manner as if expressly described in this Agreement.

4.4 Currency of Services, Technology. Service Provider will, without any additional Fee, cause the Services, as approved by Customer, to evolve and to be modified, enhanced, supplemented and replaced as necessary for the Services to keep pace with technological advances and advances in the methods of delivering services. In particular, and without limiting the generality of the preceding sentence, Service Provider's software, tools, utilities, methodologies, processes and other normal procedures for performing Services will be upgraded and enhanced as and when upgraded or enhanced for Service Provider's own business and the support of its customers generally; Service Provider will keep such software, tools, utilities, methodologies, processes and other normal procedures on current supported releases as reasonably determined by Customer; Service Provider will keep material hardware for which Service Provider has financial responsibility, as designated in Schedule 28, Financial Responsibility Matrix, under warranty and/or manufacturer's service contracts; and Service Provider will refresh hardware for which Service Provider has financial responsibility, as designated in Schedule 28, at reasonable intervals, consistent with good industry practice and as required to achieve agreed performance standards. Third party tools and utilities used to perform Services will be maintained on current, or near-current, supported releases. Adjustments in Services in accordance with this Section will be deemed to be within the scope of the Services to the same extent and in the same manner as if expressly described in this Agreement.

4.5 Procedures Manual. Within ninety (90) days after the Effective Date, with Customer's input and cooperation, Service Provider will prepare a Procedures Manual in the form and scope agreed to by the Parties and will deliver the procedures manual to Customer, for Customer's approval ("Procedures Manual").

4.5.1 The Procedures Manual will contain Service Provider's procedures for performing the Services so that the Services are performed accurately and in a timely manner, and will contain all operations manuals, support plans and user guides necessary and sufficient to document such procedures to Customer's satisfaction. Service Provider will perform the Services in accordance with the Procedures Manual.

4.5.2 Following Customer's review of the Procedures Manual, Service Provider will proactively revise the Procedures Manual on an ongoing basis and will resubmit the Procedures Manual for approval, as reasonably requested by Customer. On at least an annual basis, and at least 30 days prior to each anniversary of the Service Commencement Date, Service Provider will update the Procedures Manual to reflect any Changes in the operations or procedures described.

4.6 Change Control Procedures. Customer or Service Provider may propose Changes. All such Changes will be implemented pursuant to the procedures set forth in Schedule 14 ("Change Control Procedures").

4.6.1 Subject to Article 4.8 routine changes, such as all Changes that do not require material, net additional cost, effort or resources, or that can be accommodated with the resources ordinarily available for performance of the Services without impact to Service Levels, Projects or Deliverables, will not result in any increase or decrease to the Fees. Charges for Changes that do

require material, net additional cost, effort or resources, or that cannot be so accommodated, will be determined in accordance with Section 3.6.2, above.

4.6.2 If Service Provider and Customer are not able to agree on (i) the effect of the Change, if any, on the Fees and the manner in which such effect was calculated, (ii) the effect of the Change, if any, on Service Levels and any necessary revisions thereto, or (iii) the anticipated time schedule for implementing the Change, then the issue will be resolved in accordance with the dispute resolution procedure set forth in the Schedule 17, ("Governance and Service Provider Key Personnel"), and Article 20 of this Agreement; provided, however, Service Provider will not proceed with any Change while the Parties seek to resolve such disagreement. Service Provider shall not implement any change in its performance of Services that would have a material, adverse effect upon Customer's use or receipt of the Services, or increase Service Provider's Fees or Customer's other costs, without Customer's approval, which Customer may give or withhold in its sole discretion but not unreasonably withheld or delayed. Service Provider may make temporary changes in its operations required by an emergency if prior approval is impractical, but in such cases shall promptly document and report such emergency changes to Customer. If Customer agrees that such temporary Change was reasonably required, Customer agrees to reimburse Service Provider for reasonable costs of implementing such temporary Change.

4.6.3 Service Provider will not be required to comply with any such Change request if its compliance will violate applicable Law. Service Provider will promptly inform Customer if it determines it cannot implement the Change mandated by Customer and comply with applicable Law.

4.6.4 Service Provider will not invoice, and Customer will not be liable for, any Change or Out-of-Scope work performed by Service Provider unless a Change has been approved in accordance with the Change Control Procedures set forth in Schedule 14 ("Change Control Procedures"). The Fees for such work will be specified in the applicable Change request form.

4.7 [RESERVED].

4.8 Prioritization of Scheduling. Service Provider agrees that Customer will retain final discretion over the priorities in scheduling performance of the Services, such as any Projects, and may change priorities from time to time via the Governance Processes set forth in Schedule 17 ("Governance and Service Provider Key Personnel") and in Schedule 14 ("Change Control Procedures"). If a change in priorities by Customer will adversely affect any Service Level, Service Provider will, if practicable notify Customer's Services Director of the expected impact ("Impact Assessment") of the change in priorities. If Customer's Services Director approves the change in priorities, and there is a failure to meet a Service Level that Service Provider notified Customer may occur in the Impact Assessment, then the failure to meet the Service Level will be excused to the extent caused by the change in priorities. Customer acknowledges that changes in priorities may affect ongoing performance of Services and Fees and other costs to Customer. Service Provider agrees to cooperate with Customer and use diligent efforts to minimize additional costs, Fees or other adverse effects, and further agrees that Customer may adjust priorities, temporarily relieve Service Provider from Service Level or other obligations or authorize additional staff, Services or other resources in Customer's sole discretion.

**5. INDEPENDENT CONTRACTOR**

Service Provider and all person(s) employed by or contracted with Service Provider to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of Customer. Service Provider has full rights to manage its employees in their performance of Services under this Agreement. City shall dictate the desired work product and Services, not the specific means and methods of accomplishing the result. Service Provider is responsible for determining, providing, and administering all compensation paid, and benefits provided to, its personnel. Service Provider is responsible for the eligibility of its personnel to work in each jurisdiction where they are

providing Services to Customer and for reporting to the appropriate federal, state, and local agencies all compensation and payment of all applicable taxes arising therefrom. Customer has no authority to supervise, discipline, direct, control, or instruct any of Service Provider's personnel. City shall not require that Service Provider hire or retain any particular personnel to perform Services for the City. Service Provider shall independently determine its personnel, their associated compensation, and all other aspects of their employment. Service Provider's personnel are not eligible to participate in any of the employee benefits or similar programs of the City.

Service Provider will inform and train its personnel that they will not be considered employees of Customer for any purpose, and that Customer will not be liable to any of them as an employer in any amount for any claims or causes of action arising out of or relating to their assignment in connection with this Agreement or release therefrom. Service Provider will inform and train its personnel on the separation of City employees and Service Provider personnel. Service Provider shall require that its personnel immediately report to their respective supervisor any perceived violation of the foregoing by the City. Service Provider must immediately notify City of any such report by its personnel, and provide related information as reasonably requested by the City. Such training and/or policies shall be included as part of Service Provider's onboarding of personnel who perform the Services.

Service Provider is not authorized to bind Customer to any contracts.

Service Provider personnel should introduce themselves as Service Provider team members internally and externally. Service Provider personnel must not introduce themselves as Customer's employees.

## **6. SERVICE PROVIDER STAFF**

6.1 Service Provider Services Director. Service Provider will appoint the individual specified in Schedule 17 ("Governance and Service Provider Key Personnel") to be the Service Provider Services Director. The Service Provider Services Director will, from the date of this Agreement serve, on a full-time basis, as Service Provider's primary representative under this Agreement.

6.1.1 The Service Provider Services Director will (i) serve as Service Provider's single point of accountability for the Services, (ii) have day-to-day authority for facilitating Customer satisfaction and (iii) be authorized to act for and on behalf of Service Provider with respect to all operational matters relating to this Agreement.

6.2 Key Service Provider Personnel. The individuals specified in Schedule 17 ("Governance and Service Provider Key Personnel") will be the initial Key Service Provider Personnel. All Key Service Provider Personnel will be dedicated to the Customer account as set forth in Schedule 17 and Schedule 5, Exhibit 1.

6.3 Before assigning any new individual to a Key Service Provider Personnel position, Service Provider will (i) provide Customer with the Key Personnel's resume, and consult with Customer regarding the proposed appointment, (ii) introduce the individuals to appropriate representatives of Customer and provide Customer the opportunity to interview such individual, (iii) subject to applicable Law, provide Customer with any information regarding the individuals that may be reasonably requested by Customer, (iv) agree to Customer's request to conduct a background check on such individuals. Customer shall have the option to deny the proposed appointment of a Key Service Provider Personnel based upon the review described in sections (i)-(iv), but Customer shall not exercise the option to deny in an unreasonable manner.

6.4 [RESERVED].

6.5 Replacement. Service Provider will replace or reassign the Service Provider Services Director and Service Provider Key Personnel only in accordance with this Section.

6.6 Service Provider will not replace or reassign any of the Key Service Provider Personnel, without Customer's prior consent, which consent shall not be unreasonably withheld, for eighteen (18) months from the Effective Date (in the case of those initially assigned), or the date of an individual's first assignment to the Customer account, as applicable, unless Customer consents to such reassignment or replacement or such person (i) voluntarily resigns from Service Provider, (ii) is dismissed by Service Provider for cause, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement or (iv) dies or is unable to work due to his or her disability.

6.7 After the initial eighteen (18) month period, Service Provider will not reassign any of the Key Service Provider Personnel without prior consultation with Customer and with thirty (30) days prior written notice.

6.8 If Customer decides that any of the Key Service Provider Personnel should not continue in that position, then Customer may in its sole discretion and upon notice to Service Provider, require removal of the Key Service Provider Personnel, provided that such removal is not unlawful. Service Provider will, as soon as reasonably practicable, replace such person. Customer will generally provide at least two (2) months notification to allow Service Provider time to identify and transition new personnel in the event of a removal request, unless such Key Personnel's continued performance is not acceptable to Customer or Customer reasonably believes that immediate removal is warranted.

6.9 Contract Staff (Service Provider personnel). Service Provider will appoint a sufficient number of individuals to the Service Provider personnel so that the Services are provided in accordance with the Service Levels and generally accepted industry practices. Only individuals with proper education and experience and with suitable training and qualifications to perform the Services may be appointed to the Service Provider personnel. Except as otherwise approved by Customer in its sole discretion, Service Provider personnel working at any Customer Service Location may only provide Services that support Customer's operations and will not, during such time, provide services for other Service Provider customers. Service Provider will notify Customer as soon as reasonably practicable after dismissing or reassigning any member of the Service Provider personnel whose normal work location is at a Customer Service Location.

6.10 Service Provider will inform Customer about the non-availability of its personnel adhering to the following schedule: (a) For absences exceeding 10 business days inform no later than three (3) weeks before the expected absence; (b) For absences between 5-10 business days inform no later than two (2) weeks before the expected absence and (c) Promptly inform Customer of any ad-hoc absences. In all cases of absence of its personnel, Service Provider shall provide that there will be no impact to the Services being delivered to Customer. Customer shall not pay corresponding prorated Fees for vacancies or absences in excess of agreed schedule of Service Provider personnel, unless prior agreement has been reached for adequate backfill for such Service Provider personnel.

6.11 To ensure consistency of service delivery and minimize personnel learning curves, Service Provider agrees to make commercially reasonable efforts to limit turnover of personnel assigned to Customer's account.

6.12 Unacceptable Service Provider Personnel. Subject to applicable Laws, Customer may inform Service Provider if Customer determines that any member of its personnel is unacceptable, such as Customer's determination that such individual (i) is not performing his or her responsibilities to Customer's reasonable satisfaction in accordance with this Agreement, (ii) has violated any term or condition of this Agreement, such as the security obligations or breach or violation of Customer policies, procedures and directives, or (iii) does not pass the background check process that may be required. Within five (5) days following Customer's request, the Parties will review the matters, and if, after such review, the Parties do not otherwise agree, Service Provider will remove the individual from its personnel. Customer shall have no responsibility for any termination of employment or other disciplinary action that Service Provider or its subcontractors may take in respect of any of their personnel. In urgent cases (incidents involving dishonesty, serious misconduct, or danger to others), Customer reserves the right to require the Service Provider to remove, and Service Provider shall immediately remove, the relevant member(s) of the Service Provider personnel. Service Provider will

manage the replacement of such Service Provider personnel without disrupting Services during the replacement period and training period of new staff. Customer will not be liable for any costs related to adding such replacements to Service Provider personnel.

6.13 Subcontractors. Service Provider may subcontract its performance of Services only in accordance with this Section.

6.13.1 Prior to subcontracting any of the Services, Service Provider must first notify Customer of the proposed subcontract and subcontractor and obtain Customer's prior approval, except that Service Provider may, without Customer's prior approval, (i) enter into subcontracts for the third party services or products of the Subcontractors listed in Schedule 18 ("Approved Subcontractors"), or (ii) in the ordinary course of business, enter into subcontracts for third party services or products for which total estimated or anticipated value is less than fifty thousand dollars (\$50,000) in Services to Customer in any Contract Year; provided, however, that such subcontract does not constitute a material portion of the Services and/or are not exclusively dedicated to Customer; and (iii) to companies performing any non-Customer specific effort that are used by Service Provider to provide the Services.

6.13.2 Any subcontract must contain: (i) terms and conditions at least as protective of Customer and its confidential and proprietary information, data protection and privacy as the terms and conditions of this Agreement, (ii) waivers of any lien rights, and (iii) an acknowledgment that Customer will have no liability to subcontractor for amounts that are owed to subcontractor arising out of the Services.

6.13.3 Prior to materially amending, modifying or otherwise supplementing any subcontract for an Approved Subcontractor that affects the Customer, Service Provider must notify Customer of the proposed amendment, modification or supplement and must obtain Customer's approval.

6.13.4 No subcontracting will release Service Provider from its responsibility for its obligations under this Agreement. Service Provider will be responsible for the work and activities of any subcontractor, such as compliance with the applicable terms of this Agreement.

6.13.5 Customer may revoke its approval of any subcontractor whose performance Customer reasonably believes to be deficient, and in such cases Service Provider shall discontinue use of the subcontractor's products and/or services and provide substitutes therefor.

6.13.6 Service Provider will be responsible for all payments to its subcontractors and will indemnify, defend and hold Customer harmless from and against all Claims by its subcontractors pursuant to Section 21.2.

## **7. FACILITIES USE**

7.1 Customer Facilities. To the extent specified in an applicable Service Description, Customer will make available to Service Provider furnished space in the Customer Service Location specified in such Service Description for the purpose of allowing Service Provider to perform the Services.

7.2 Relocation of Customer Service Location. If Customer directs Service Provider to relocate from one Customer Service Location to another Customer Service Location, Service Provider will do so; provided, however, that (i) Customer will provide reasonable advance notice to Service Provider of any such relocation, (ii) Customer will (a) provide comparable space and facilities in such relocated Customer Service Location in accordance with the applicable terms of this Agreement, or, at Customer's option, (b) reimburse the reasonable, actual cost of substitute space; and (iii) Customer will reimburse Service Provider for any direct out-of-pocket costs incurred by Service Provider as a result of such relocation that are accompanied by supporting documentation. Prior to the relocation, Service Provider will provide Customer with an Impact Assessment of any such relocation. In the event

such move impairs Service Provider's ability to meet Service Levels as Service Provider notified Customer in the Impact Assessment, Service Provider will be relieved from its obligation to meet those Service Levels for a reasonable period of time to the extent impairment is caused by the relocation. Service Provider shall relocate affected operations in an orderly manner, pursuant to a plan approved by Customer, so as to minimize any interruption in affected Services or other adverse effects upon Customer, its business, operations or affairs.

**7.3 Service Provider Use of Facilities.** Unless obtaining Customer approval to the contrary, Service Provider will: (i) use the space in the Customer Service Location for the sole purpose of providing the Services and otherwise meeting its obligations under this Agreement; (ii) comply with the leases and other agreements applicable to the Customer Service Location; and (iii) comply with all policies and procedures governing access to and use of Customer Service Location, which policies and procedures will be provided to Service Provider prior to its access and use of the Customer Service Location.

7.3.1 Use of such facilities by Service Provider does not constitute leasehold or sub leasehold interest in favor of Service Provider, but is instead a license, revocable by Customer at any time.

7.3.2 Service Provider will use the Customer Service Locations in a reasonably efficient manner. To the extent that Service Provider inappropriately operates the space in a manner that increases facility costs incurred by Customer disproportionate to that reasonably required for Service Provider's provision of Services to Customer, Service Provider will reimburse Customer for such additional costs.

7.3.3 Service Provider will keep the Customer Service Locations in good order, not commit or permit waste or damage to such facilities and not use such facilities for any unlawful purpose.

7.3.4 When the Customer Service Locations are no longer required for performance of the Services, Service Provider will return such locations to Customer in substantially the same condition as when Service Provider began using such locations, ordinary wear and tear excepted.

**7.4 Facilities-Related Services.** Service Provider will permit Customer and Customer agents to enter into those portions of the Customer Service Locations occupied by Service Provider's staff at any time to perform facilities-related services (such as, for example, repairs to the building). Prior to the facilities-related services, Service Provider will provide Customer with an Impact Assessment of such facilities-related services. In the event such entrance or presence impairs Service Provider's ability to meet one or more Service Levels as notified to Customer in the Impact Assessment, Service Provider will be relieved from its obligation to meet those Service Levels for a reasonable period of time to the extent impairment is caused by the Customer's performance of the facilities-related services.

**7.5 Improvements.** Service Provider will not make any improvements or changes involving structural, mechanical or electrical alterations to the Customer Service Locations without Customer's approval, which Customer will not unreasonably withhold if Service Provider demonstrates that such improvements or changes are reasonably necessary to provide the Services and to meet Service Provider's other obligations under this Agreement. Approved improvements will become Customer's property, or that of Customer's lessor, if so required under applicable leases. Service Provider shall keep Customer's property, and that of its lessors, free from mechanic's, materialmen's and other liens of every kind and take all reasonable measures that Customer or its lessors may require (such as posting of bonds and obtaining releases of claims of lien).

## **8. MANAGED AND ASSIGNED AGREEMENTS**

**8.1 Managed Agreements.** Service Provider will manage, administer and maintain the Managed Agreements at no additional cost to Customer. The Managed Agreements are specified in

Schedule 8, Managed and Assigned Agreements. Service Provider will provide Customer with reasonable notice of any option, renewal, termination or cancellation dates and fees with respect to the Managed Agreements. Service Provider will not renew, modify, terminate or cancel, or request or grant any consents or waivers under any Managed Agreements without the consent of the appropriate entity or unit of Customer.

8.2 Invoices. Service Provider will (i) receive all Managed Agreement Invoices, (ii) review and correct any errors reasonably known to Service Provider in any such Managed Agreement Invoices in a timely manner and (iii) submit such Managed Agreement Invoices to Customer within two weeks prior to the due date or, if a discount for payment is offered, two weeks prior to the date on which Customer must pay such Managed Agreement Invoice in order to receive a discount.

8.2.1 Customer will be responsible for paying the Managed Agreement Invoices after processing by Service Provider. Customer will be responsible for any late fees in respect of the Managed Agreement Invoices if Service Provider submits the applicable Managed Agreement Invoices to Customer for payment according to the timeline specified above in Section 8.2

8.2.2 If Service Provider fails to submit a Managed Agreement Invoice to Customer for payment in accordance with the preceding sentence, and such failure is due to an act or omission on the part of Service Provider, Service Provider will be responsible for any discount not received, any late fees incurred, or any other adverse action taken by a third party pursuant to the terms of such Managed Agreement with respect to such Managed Agreement Invoice. Without limiting the foregoing, Service Provider shall be responsible for payment of such Managed Agreement Invoices, without reimbursement from Customer, that Service Provider fails to submit to Customer within 60 days of receipt by Service Provider.

8.2.3 Customer will not be responsible to Service Provider for any management, administration or maintenance fees of Service Provider in connection with the Managed Agreement Invoices.

8.3 Assigned Agreements. As of the applicable Service Commencement Date, Service Provider will assume all responsibility for the Assigned Agreements specified in Schedule 8 ("Managed and Assigned Agreements").

8.3.1 Charges relating to Assigned Agreements will be pro- rated as of the relevant Service Commencement Date or the date of assignment, as appropriate. Service Provider will be solely responsible for paying all charges under such Assigned Agreements that may become payable after such date. Service Provider will pay the invoices submitted by third parties in connection with the Assigned Agreements and will be responsible for any late fees incurred with respect to such third party invoices.

8.3.2 Service Provider will consult with Customer prior to taking any action to renew, modify, terminate or cancel, or request or grant any consents or waivers under any Assigned Agreement. Any modification, termination or cancellation fees or charges imposed upon Customer in connection with any modification, termination or cancellation of, or consent or waiver under, the Assigned Agreements will be paid by Service Provider.

8.4 Breach of Agreements. Service Provider will promptly notify Customer of any breach of, misuse or fraud in connection with, any Managed Agreements or Assigned Agreements that Service Provider knows occurred or reasonably should know has occurred. Service Provider will cooperate with Customer to prevent or stay any such breach, misuse or fraud.

8.4.1 Service Provider will pay all amounts due for any penalties, liquidated damages, late charges or other similar charges (such as amounts due to a third party) as a result of (i) Service Provider's non-performance or breach of its obligations under the Assigned Agreements or (ii) Service Provider's breach of its assumed obligations with respect to the Managed

Agreements, or (iii) breaches of Managed Agreements attributable to Service Provider's acts or omissions.

8.4.2 Customer will reimburse Service Provider for any penalties, liquidated damages, late charges or other similar charges incurred by Service Provider for any non-performance or breach of Customer's obligations under the Managed and Assigned Agreements that are the result of an act or omission by Customer (excluding acts or omissions undertaken at Service Provider's direction or with Service Provider's consent).

8.5 Improved Terms. Service Provider will use its commercially reasonable efforts to:

8.5.1 introduce service levels which reflect generally accepted industry best practices for services provided under the Managed Agreements and Assigned Agreements, respectively, upon renewal of any such Managed Agreements and Assigned Agreements; and

8.5.2 effect savings, pricing reductions and improved services in all Managed Agreements (other than those agreements exempted from this requirement and identified as such in Schedule 8 at the earliest practicable date by renegotiation and using its purchasing power to obtain discounts, improved services, improved service levels and better overall pricing.

8.5.3 Subject to the terms of third-party agreements, Service Provider shall pass on any group purchasing savings or supplier discounts to Customer and shall not charge any price mark-up for IT asset purchases requested by Customer.

8.6 Replacement of Providers. Service Provider will be entitled upon notification to Customer and consent by Customer, which consent will not be unreasonably withheld, to replace and substitute service providers under Assigned Agreements, either on renewal of such agreements, or prior to renewal upon the service provider's default or other similar reason for early termination of an Assigned Agreement by Service Provider. All contracts with replacement providers shall be freely transferable to Customer. Customer may replace or substitute service providers under Managed Agreements at any time, in its discretion.

## 9. SERVICE LEVELS

9.1 General. Service Provider will perform the Services at the Service Levels in accordance with Schedule 4 ("Service Levels").

9.1.1 Service Provider shall maintain the Service Levels set forth in Schedule 4.

9.2 [RESERVED].

9.3 [RESERVED].

9.4 Root Cause Analyses. In the event of any failure to provide the Services in accordance with the applicable Service Levels (whether or not excused), Service Provider will within five (5) business days of such failure, or such other time period as may be specified in the applicable Service Levels Schedule or as may be mutually agreed, (i) perform a root-cause analysis to identify the cause of such failure, and (ii) provide Customer with a report detailing the cause of, and procedure for correcting such failure. Upon Customer's approval of such procedure, implement such procedure as per mutually agreed timeframe, and provide Customer with assurance satisfactory to Customer that such failure will not recur following the completion of the implementation of the procedure.

## 10. PAYMENT TERMS

10.1 Fees. In consideration of Service Provider providing the Services, Customer will pay to Service Provider the Fees as set forth in Schedule 5 ("Fees"). The Fees set forth in Schedule 5 define charges for all tools, software, personnel and other resources required to provide Services to



Customer. Except as expressly set forth in this Agreement, there will be no other charges or Fees payable by Customer in respect of Service Provider's performance of its obligations under or in connection with this Agreement, other than retained or pass-through costs expressly identified in applicable Schedules, which shall, to the extent possible, identify and estimate all third party costs to be retained by or passed through to Customer. Customer shall not pay any handling charge or administrative charge or markup on any pass-through cost or cost reimbursement. Customer may set-off against the Fees any amounts owed to Customer by Service Provider, as provided below. Further, Customer shall have no obligation to pay or reimburse any Pass-Through or other expense of any kind except to the extent required by the express terms of the Agreement or from time to time agreed in writing by the Parties' authorized representatives. Customer shall not pay for vacancies or absences in excess of agreed schedule of Service Provider personnel, as identified in Schedule 5, unless prior agreement has been reached for adequate backfill for such Service Provider personnel.

10.2 Invoicing. No later than the tenth (10th) day of each calendar month during the term of this Agreement, Service Provider will invoice Customer for the Services performed in the prior month.

10.2.1 Unless otherwise specified in Schedule 5, Service Provider will invoice the Fees in United States Dollars.

10.2.2 Each of Service Provider's invoices will (i) set forth (a) any pass-through expenses incurred and billable under the express terms of this Agreement and (b) any discounts, credits or charges, such as Service Credits, Additional Resource Charges and Reduced Resource Credits, charged or issued during the period to which such invoice relates, and (ii) reflect any adjustment to or change in the Fees implemented during the period to which such invoice relates. Service Provider's invoices will be in the format attached as Schedule 26 ("Invoice Format"), will describe or be accompanied by all relevant calculations, and allocate Service Provider's charges in a manner consistent with Customer's reasonable chargeback requirements.

10.2.3 All invoices must be presented within one-hundred eighty (180) days after the end of the relevant month or completion of the relevant milestone. Customer will not be obligated to pay any amount (including any allowable pass-through expense) not invoiced in accordance with this Agreement within such time period.

10.3 Payment. The undisputed Fees will be due and payable to Service Provider within thirty (30) days of receipt of Service Provider's invoice.

10.4 Credits and Refunds. Service Provider will promptly provide credit to Customer on invoices for the previous month's vacancies or absences exceeding agreed schedule of Service Provider personnel, identified in Schedule 5. Service Provider will promptly credit any payment made to which Service Provider is not entitled under this Agreement and refund to Customer any such payment for which there are not sufficient Additional Resource Charges under the then-current invoice against which to credit the overpayment. If Service Provider receives any refund, credit or other rebate (such as deposits) in connection with any Managed Agreement or Assigned Agreement that is attributable to periods prior to the Effective Date or for which Customer retained financial responsibility after the Effective Date, then Service Provider will promptly (i) notify Customer of such refund, credit or rebate and (ii) pay to Customer the full amount of such refund, credit or rebate in cash. Service Provider will reimburse Customer for all prepaid amounts related to the Services to the extent that Service Provider receives the benefit of any such pre-payment.

Additionally Service Provider will promptly provide credit for undisputed SLA failures per Schedule 4 ("Service Levels").

10.5 Taxes and Tariffs. Customer shall pay all applicable taxes and tariffs imposed directly upon the performance of Services provided by the Service Provider to Customer. Customer is not responsible for any taxes based on the income of Service Provider. In addition, Customer is not responsible for taxes paid by Service Provider relating to employees and resources acquired by Service Provider to provide the Services. The license interest described in Section 7 above may be

subject to property taxation if a possessory interest is created for Service Provider; in such case, the Service Provider may be subject to the payment of property taxes levied on the interest in accordance with Revenue and Taxation Code Section 107.6. Customer and Service Provider shall cooperate in the defense of any action instituted by the County to assess a possessory interest tax levy.

**10.6 Disputed Amounts.** Customer may reasonably dispute an amount on an invoice and may withhold payment of such disputed amount. In such event, Customer will promptly notify Service Provider in writing of the disputed amount, with an explanation of the reasons therefore. Following notification of a disputed invoice charge, the Parties will use their reasonable endeavors to resolve the disputed amount within fifteen (15) days. If the Parties cannot resolve the disputed amounts within fifteen (15) days, then the matter will be escalated to the representatives of the Parties specified in Article 20 ("Governance") for resolution. Upon resolution, the amount, if any, payable will be paid to Service Provider. If the aggregate amounts withheld or set off exceed twice the average monthly invoiced amount from Service Provider, Customer shall place such amounts in an escrow account ("Escrow Account") in an FDIC-insured bank chosen by Customer, pending resolution of the dispute by mutual agreement or pursuant to Article 20 ("Governance"). Amounts held in escrow (with interest received, if any) shall be released upon joint instruction of the Parties following any settlement or other mutual agreement, or as determined by final adjudication of the dispute (less, in either case, reasonable, applicable escrow costs, which shall be equally divided).

**10.7 Setoff and Withholding.** Except as set forth in this Section 10, Customer will not withhold payment of any undisputed amounts. If Service Provider fails to pay when due any amount due under the Assigned Agreements for which Customer remains liable, then upon written request, the Parties' Account Executives shall immediately consult concerning the matter and make reasonable efforts to resolve the matter within thirty (30) days after the request. If the Parties are unable to resolve the matter, then Customer may pay the obligation and withhold or set off the amount reasonably believed to be owed from Service Provider's invoices.

**10.8 Equitable Adjustment.** In the event of an increase or decrease of fifteen percent (15%) or more in the total fees, total consumption of all chargeable resources, and total volume of Services that the parties anticipated would otherwise be the case during any three month period that this Agreement is in effect, then either Party may request, via the Change Control Procedure, an equitable adjustment of relevant charges to account for (i) net increases or decreases in costs of performance, (ii) costs of acquisitions or dispositions of assets, (iii) one time costs associated with effecting changes, and (iv) a reasonable allowance for profit. Termination for Convenience Fees shall also be adjusted to reflect changes in scope, investments in and dispositions of assets, and other related changes in un-amortized costs to be recovered thereby in the event of termination.

## **11. MOST FAVORED CUSTOMER**

Service Provider represents, warrants and covenants that at all times during the Term, the Fees are at least as favorable to Customer as the most favorable prices then offered or provided by Service Provider to any other commercial or government customer for services substantially similar to the Services being provided to Customer under this Agreement. For these purposes, "substantially similar" will be understood to mean taking into account the geography served, service levels, service locations, in-scope processes, volumes, systems used, industry served, and other material transaction elements. If Service Provider offers or provides services to any other commercial or government customer that are substantially similar to the Services provided to Customer for prices lower than the prices being charged to Customer, then Customer's price for the Services will be automatically reduced to be commensurate with such more favorable prices as of the date such more favorable price is provided to such other commercial or government customer. In the event of a Change, the pricing for any new services or work will be as low as that granted by Service Provider to any substantially similar customer for such services or work bearing in mind all of the relevant circumstances in which such services or work are provided.

## 12. **BENCHMARKING**

In accordance with Schedule 6 ("Benchmarking"), Service Provider shall be subject to a continuing benchmarking program of the Services, taking into consideration adjustments for reasonably comparable elements of the Services, that shall enable Customer to compare the Fees and Service Levels set forth in this Agreement with, and ensure that said Fees and Service Levels are similar in price and quality to, similarly bundled service offerings (accounting in the aggregate for the scope, service levels, duration, and volume of business) of other IT service providers.

## 13. **COMPLIANCE AND AUDIT**

13.1 Compliance with Laws. Each Party will obtain and maintain all Authorizations applicable to such Party at its own expense. Service Provider will comply with all Laws, and Regulatory Requirements, applicable to Service Provider's delivery of the Services and its performance of this Agreement, such as those imposed on Customer but applicable to activities or tasks that Service Provider undertakes pursuant to this Agreement. Customer will comply with all Laws applicable to Customer's receipt of Services and its performance of this Agreement. In particular, and without limiting the generality of the foregoing, Service Provider and all of its personnel and Subcontractors as related to their performance of the Services will comply with (a) any applicable requirements of any federal, national, state, and local authority regulating health, safety, employment, civil rights, the environment, hazardous materials, privacy, confidentiality, security, exportation, or telecommunications, (b) all applicable laws and regulations relating to the collection, dissemination, transfer, storage and use of data, specifically including, without limitation, the privacy and security of confidential, personally identifiable information, sensitive or other protected data, (c) anti-corruption laws, including (without limitation) the US Foreign and Corrupt Practices Act, and (d) Payment Card Industry Digital Security Standard (as amended or revised). In addition, Service Provider will enter into model processor or other, similar agreements concerning transfers of personally identifiable data within and without the member states of the European Union, when reasonably required by Customer, and cause its subcontractors to do so.

13.2 Changes in Laws. Service Provider will be responsible for identifying and becoming familiar with any changes in Laws that are related to Service Provider's delivery or performance of the Services. If Service Provider becomes aware of changes in Laws that impact Customer's use or receipt of the Services, Service Provider will reasonably inform Customer. Service Provider is not required to comply with any Customer laws or regulations that would conflict with US and other countries' export control and sanctions laws.

13.2.1 Service Provider will promptly notify Customer of any such changes in Laws and will advise Customer of what actions, if any, Customer must take and when those actions must be taken related to the Services to remain compliant with such Laws, except for changes in Laws directed at the government sector, in which event Customer will notify Service Provider of changes to such Laws that affect Service Provider's delivery or performance of the Services.

13.2.2 Service Provider and Customer will work together to identify the impact of such changes on how Customer uses, and Service Provider delivers, the Services.

13.2.3 Service Provider will perform the Services at no additional charge to Customer and will bear the costs associated with (i) regulatory changes affecting its business as a provider of the Services, (ii) changes in Service Provider's standards, methods, practices and procedures for customers generally, (iii) changes in Laws other than changes in Laws directed at the government sector and (iv) regulatory changes affecting the Service Provider's customers generally, unless such changes and Service Provider's compliance with such changes will result in material cost increases to Service Provider above and beyond those necessary to effect changes affecting Service Provider's other customers and operations generally. Costs affecting Customer's receipt of the Services specific to Customer's unique compliance measures shall be subject to good faith meet and confer, and will be determined and compensated in accordance with the Change Control Procedures.

13.2.4 If a change in Laws prevents Service Provider from performing its obligations under this Agreement, Service Provider will, if practicable, develop and, upon Customer's approval, implement a suitable workaround until such time as Service Provider can perform its obligations under this Agreement in compliance with Laws without such workaround.

13.2.5 [RESERVED].

13.3 HIPAA Compliance. Service Provider agrees to comply with all requirements that are now or will become applicable to it in its role as the service provider under this Agreement pursuant to regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (as the same may have been and/or may be amended from time-to-time, "HIPAA").

13.4 Transborder Data Flows/GDPR. Service Provider shall not transfer any Customer Data across a country border unless Service Provider reasonably considers such transfer appropriate or useful for Service Provider's performance of the Services, or obtains Customer's prior written consent. Service Provider understands and acknowledges that, to the extent that performance of its obligations hereunder involves or necessitates the processing of personal data, Service Provider shall comply promptly with instructions and directions received by Service Provider from Customer with respect to the processing of personal data. To the extent applicable, the Parties agree to cooperate with respect to any permitted trans-border data flows to comply with the Regulation (EU) 2016/679 (General Data Protection Regulation (GDPR)) and Directive (EU) 2016/680, inclusive of all amendments thereto. With respect to such trans-border data flows, and if requested by Customer, Service Provider also undertakes to execute or to cause the relevant data importer to execute, as part of the Services provided to Customer any documents, including any data transfer agreement, which may be reasonably required by Customer or the relevant data exporter to comply with applicable data protection laws.

13.5 PCI Compliance. Service Provider acknowledges and agrees that to the extent that credit card data is collected, processed, stored or transmitted, Service Provider shall adhere to the Payment Card Industry (PCI) Data Security Standards and provide proof of compliance with PCI standards upon Customer's request. Such compliance shall include, without limitation, compliance with PCI-DSS security controls, certification and notification requirements.

13.6 Unlawful Payments. Service Provider has not and will not directly or indirectly through a third-party intermediary pay or provide, or offer to pay or provide, any monies or other items of value (for example, gifts, meals, contracts, entertainment, employment, hospitalities, and sponsorships that are not permitted by Service Provider) to (i) an officer or employee of a governmental department, agency, instrumentality (such as a government-owned commercial enterprise) or public international organization, or any person acting on behalf of any such entity; or (ii) any political party or official thereof or any candidate for political office, in order to obtain, retain or direct business to any person.

13.7 Compliance with Laws and Ethics Policies. Service Provider and Approved Subcontractors shall comply with all applicable laws and regulations of the federal, state and local government, e.g., "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Service Provider has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

13.8 Service Provider Internal Audits. Service Provider will, upon request, make available to Customer a summary report of the results and a summary of pertinent supporting information of any internal or external review or audit conducted by Service Provider and its internal and external auditors, relating to Service Provider's operating practices and procedures to the extent relevant to the Services, such as Schedule 10, Security Protocol. Customer acknowledges that Service Provider's audits, reviews, audit results and other related information are Confidential Information hereunder.

13.9 [RESERVED].

13.10 Audit. Upon thirty (30) days' prior notice from Customer, unless shorter notice is required by exigent circumstances, and subject to the confidentiality obligations in Article 17, Service Provider will provide, and will cause its Approved Subcontractors to provide, Customer or any Customer representative (other than a Service Provider Competitor), with access to such facilities, records and supporting documentation as may be reasonably requested by Customer in order to audit Service Provider's compliance with its obligations under this Agreement, such as those pertaining to Fees, Service Levels, the Security Protocol the Customer Controls and any applicable Authorization, Consent, Assigned Agreement, Managed Agreement or ethics policies. Audits shall be conducted in a manner that minimizes any disruption of Service Provider's performance of Services and other normal operations.

13.10.1 Service Provider will, and will cause its Approved Subcontractors to, (i) assist Customer and its designees in the performance of the audits described in this Section or (ii) cooperate fully with Customer and its designees in the performance of the audits described in this Section. Upon Customer's request, Service Provider will provide a reasonable level of resources to support the performance of the audits described in this Section, at no additional cost to Customer. Service Provider's obligations to provide any such support shall not impede Service Provider's ability to meet its obligations under this Agreement or Service Provider's normal business operations. Customer, in its sole discretion and at its expense, may perform the audits described in this Section through its internal and/or external auditors.

13.10.2 If an audit of Fees charged discloses that Service Provider has overcharged Customer, Customer will notify Service Provider of the amount of such overcharge and Service Provider will promptly pay to Customer the amount of the overcharge, plus Interest calculated (at the then Prime Rate) from the date of receipt by Service Provider of the overcharged amount until the date of repayment to Customer. If such audit reveals any other deficiencies in Service Provider's performance of its obligations under this Agreement, such as any Schedules, Service Provider will promptly take steps to rectify all such deficiencies. At Service Provider's request, Customer will make the audit report available to Service Provider and provide Service Provider an opportunity to explain any apparent discrepancies. If the audit of Fees charged discloses that Service Provider has undercharged Customer, Customer will promptly pay to Service Provider the amount of the undercharge without interest.

13.10.3 If, as and when regulatory authorities with jurisdiction over Customer so request, Service Provider will cooperate with regulatory agencies, their auditors and examiners, in the same manner contemplated by this Section for audits conducted by Customer.

13.10.4 Service Provider shall submit to Customer, an acceptable plan to cure any such breaches and process/system weakness within thirty (30) days (unless a shorter period is required by exigent circumstances) and thereafter diligently complete the cure within the said period.

13.10.5 Customer, its auditors and other representatives shall observe Service Provider's reasonable confidentiality and security arrangements. Service Provider Competitors shall not be engaged to audit Service Provider.

13.11 Control Rules. Without limiting the generality of the foregoing and subject to this Section 13.8 and the confidentiality provisions of this Agreement, Service Provider will provide, or cause its auditor to provide, Customer and its internal and external auditors with all descriptions of controls, tests of controls, audit reports and any other information that Customer or its auditor deem appropriate or necessary to enable Customer and its auditor to fulfill their legal obligations under the Securities Act of 1933; the Securities Exchange Act of 1934; the Sarbanes Oxley Act of 2002; related rules and regulations of the Securities and Exchange Commission, and Regulation S-X thereto; the rules, regulations and listing standards of the New York Stock Exchange; the rules, regulations and standards of the Public Company Accounting Oversight Board; and any other financial control or

disclosure requirement imposed by law on public companies, as such legal requirements may be amended or modified from time to time (the "Control Rules").

13.11.1 Service Provider will assist Customer to comply with the Control Rules by, (i) placing in operation as of the Commencement Date and thereafter maintaining the internal controls and procedures related to the Services and described in Schedule 27 (the "Internal Controls and Procedures"); (ii) documenting (using Microsoft Office or any other documentation product ) such internal controls and procedures; (iii) cooperating with Customer and its auditor in connection with testing the effectiveness of such controls and procedures; (iv) implementing the additional or alternative controls that Customer has in place or from time to time requires (or such superior controls as Service Provider may from time to time recommend, and Customer may approve in its sole discretion); and (v) correcting any material weakness or significant deficiency as defined by the Control Rules or any other deficiency that would prevent Customer from complying with the Control Rules.

13.11.2 On a Customer fiscal year basis [July 1st – June 30th] ("Fiscal Year"), Service Provider and all applicable Subcontractors, at Customer's expense, shall require Service Provider's auditors to conduct an examination of the controls placed in operation, with respect to Provider's performance of the specific Services for Customer, and a test of operating effectiveness of such controls, as defined by (i) Statement on Standards for Attestation Engagements (SSAE) No. 16, No.1 Report on Controls at a Service Organization Relevant to User Entities' Internal Control over Financial Reporting ("SOC 1") and (ii) AICPA Attest Engagements AT Section 101 (AT101) and Trust Services Principles 100 (TSP100) ("SOC 2") (i.e., the successor standard to SAS 70) and issue a report for each thereon (a "Type 2 Report") for the applicable Fiscal Year. Notwithstanding the foregoing, should Service Provider, as part of its normal course of operations, produce a SSAE No. 16, Type 2 Report on an annual basis for its own facilities, Provider shall provide a copy of such report, at no additional cost, to Customer.

13.11.3 The Type 2 Report should include a period of testing no less than six (6) months, a portion of which shall occur during the first month of the second half of Customer's Fiscal Year. The Type 2 Report will be issued semi-annually for the periods ending [December 31st] and [June 30th]. Service Provider shall submit the proposed control objectives to Customer for approval prior to conducting the audit. Service Provider and all applicable Subcontractors shall deliver to Customer a copy of the Type 2 Report within six (6) weeks after conducting the applicable SSAE assessment for a Fiscal Year (but in no event later than December 15th within the Fiscal Year for which the audit was conducted) and Service Provider shall prepare and implement a corrective action plan to correct any deficiencies or resolve any problems identified in such report.

13.11.4 Service Provider shall address any audit control issues or weaknesses identified in any Type 2 Report, at no cost to Customer. If specific audit recommendations are not implemented by Service Provider, then Service Provider should implement such alternative steps as are reasonably satisfactory to Customer for the purposes of minimizing or eliminating the risks identified in any such Type 2 Report. If requested, Service Provider shall have its auditor provide a representation letter stating that no other control deficiencies have occurred since the delivery of the Type 2 Report. Costs specific to Customer's unique compliance measures will be determined and compensated in accordance with the Change Control Procedures.

13.11.5 Service Provider shall address any audit control issues or weaknesses identified in any Type 2 Report, at no cost to Customer. If specific audit recommendations are not implemented by Service Provider, then Service Provider should implement such alternative steps as are reasonably satisfactory to Customer for the purposes of minimizing or eliminating the risks identified in any such Type 2 Report. If requested, Service Provider shall have its auditor provide a representation letter stating that no other control deficiencies have occurred since the delivery of the Type 2 Report.

13.12 Records. Service Provider will maintain and provide access, upon Customer's request, to those records, documents and other information relating to this Agreement and the provision of the Services for five years from expiration or termination of this Agreement. At any time after expiration or termination of this Agreement, Service Provider may retire its retention obligation under this Section 13.9 by providing a copy of such documents and records to Customer in a mutually agreed format. Upon notice from Customer, Service Provider will suspend any document destruction policy for any period of time reasonably requested by Customer.

#### 14. TERM AND TERMINATION

14.1 Initial Term. The term of this Agreement will commence on the Effective Date and will be in effect for a period of thirty (30) months from the Effective Date, subject to Section 14.9, unless this Agreement is (i) sooner terminated in accordance with this Article 14 or (ii) extended in accordance with its terms or by mutually agreed amendment.

14.2 RESERVED].

14.3 RESERVED].

14.4 Termination by Customer. Customer may terminate this Agreement, in whole or in part, in accordance with the following:

14.4.1 **For Convenience**. Customer shall have the right to terminate for its convenience, at any time and for any reason or no reason: (a) the Term of this Agreement with regard to the Services, or (b) any portion of the Services (e.g., a Service Tower or subcomponent), then being provided by Service Provider. Any such termination shall be effected by Customer sending to Service Provider a written notice of termination specifying the extent of the Services being terminated and the intended date (the "Termination Date") upon which, at 11:59 p.m., such termination shall be effective ("Termination Notice"). The Termination Date specified in any such Termination Notice sent by Customer pursuant to this Section 14.4.1 shall be at least one hundred twenty (120) days after the date of such Termination Notice. In the event that Customer terminates or ends the Term of this Agreement or any portion of the Services for its convenience pursuant to this Section, Customer shall pay Service Provider the applicable Termination Fee set forth in Schedule 5("Fees"). Notwithstanding the foregoing, Termination Fees shall be proportional and pro-rated to the scope of the Services being terminated. For clarity, Termination Fees shall be structured as a downward sliding scale such that the amount of the fee decreases over time, reflecting the Service Provider's amortization or depreciation of sunk cost investment to provide the Services. Furthermore, Termination Fees shall in no event include any lost profits, and Service Provider shall limit such fees to sunk, non-recoverable investment costs but shall also mitigate non-amortizable portion of such investment costs. Customer shall not be responsible for any additional Termination Fees or other actual non-amortized costs except to the extent that the Parties have mutually agreed to (i) adjust or change the scope of Services, (ii) amend the scope of applicable Termination Fees or other actual non-amortized costs, and (iii) execute an amendment to this Agreement or change order in accordance with the process outlined in this Agreement.

14.4.2 **For Change in Control**. In the event of a change of control of Service Provider resulting from a single transaction or a series of related transactions, Customer shall have the right to terminate: (a) the Term of this Agreement with regard to the Services, or (b) any portion the Services (e.g., a Tower or subcomponent), then being provided by Service Provider by sending to Service Provider a Termination Notice at least thirty (30) days before the Termination Date specified therein. Solely for purposes of this Section: (i) "control" means the legal, beneficial, or equitable ownership, direct or indirect, of more than fifty percent (50%) of the aggregate of all voting or equity interests in Service Provider; and (ii) a "change in control" shall be deemed to have occurred whenever, as a result of a single transaction or a series of related transactions, a Person (or a group of Persons acting in concert) that had not previously had control of Service Provider obtains control of Service Provider, in accordance with clause (i) of this Section. No

Termination Fee shall be payable by Customer to Service Provider for Termination based on change in control.

**14.4.3 For Default.** Notwithstanding anything to the contrary, Customer shall have the right to terminate: (a) the Term of this Agreement with regard to the Services, or (b) any portion the Services (e.g., a Service Tower or subcomponent), then being provided by Service Provider by delivery of a Termination Notice to Service Provider, if Service Provider commits a Default under this Agreement. In the event of any such termination by Customer for Default, Service Provider shall nevertheless perform its Termination Assistance obligations under this Agreement until they are fulfilled and any initiative reasonably requested by Customer for up to one (1) year after the effective date of such termination. Any such termination shall not constitute Customer's exclusive remedy for such Default, nor shall such a termination result in Customer being deemed to have waived any of its rights accruing hereunder prior to such Default. If Customer terminates the Term or any portion of the Services as a result of a claimed Default by Service Provider pursuant to the terms of this Section, and Service Provider does not agree that a Default was committed, then Service Provider shall have the right to avail itself of all remedies available to it at law or in equity. In the event that it is subsequently and finally determined by a court of competent jurisdiction, or otherwise mutually agreed by the Parties in writing, that the circumstances claimed by Customer to constitute a Default by Service Provider, and that formed the basis of a termination of the Term of this Agreement or any portion of the Services by Customer pursuant to this Section, did not in fact constitute a Default, then the Term of this Agreement, or applicable portion of the Services, shall be deemed to have been terminated by Customer for its convenience, pursuant to Section 14.4.1, as of the Termination Date specified by Customer in the Termination Notice originally delivered with respect to such termination, and the provisions of Section 14.4.1 shall thereafter in all respects govern such termination. In the event Customer exercises its rights as set forth in this Section, no Termination Fee shall be payable by Customer to Service Provider.

**14.4.4 Force Majeure.** By not less than ten (10) days notice to Service Provider, and without paying any termination charges, if (i) a Force Majeure Event is either incurable or has continued for at least ten (10) days that renders impracticable the performance of the Services (or any material portion of the Services) by Service Provider substantially as contemplated hereby or (ii) Service Provider fails to provide the disaster recovery or business continuity services as set forth in Schedule 23 ("Disaster Recovery Plan"), unless such disaster recovery obligations were themselves prevented by a force majeure event; or

**14.4.5 Availability of Funds.** Any payment obligation of Customer created by this Agreement is conditioned upon the availability of Customer funds which are appropriated or allocated for the payment of such payment obligations; provided, however, that Customer agrees that it will request such funds each year during the Term. If such funds are not allocated and available, this Agreement may be terminated by Customer at the end of the period for which funds are available. No penalty shall accrue to Customer in the event this provision is exercised, and Customer shall not be obligated or liable for any future Fees due for any Services as a result of termination under this Section 14.4.5. Customer will promptly notify Service Provider if it appears reasonably likely that funds will not be appropriated or allocated. Notwithstanding any other provision of this Agreement to the contrary, Service Provider shall, immediately upon termination by Customer for non-appropriation, be released from any obligation to provide any further Services pursuant to this Agreement. Notwithstanding that Section 14.4 permits Customer to terminate the Agreement in whole or in part the Parties understand and agree that, with respect to this Section 14.4.5, that Customer may only terminate the Agreement in whole.

**14.5 Termination by Service Provider.** Service Provider may terminate this Agreement solely if: (a) Customer (or Affiliates) has failed to make payments due under Section 10; (b) the aggregate total of such payments exceeds five million Dollars (\$5,000,000) (c) such payment is not subject to a good faith dispute, (d) no earlier than (60) calendar days after the payment's due date Service Provider gives written notice of its intent to terminate; and (e) no less than thirty (30) additional calendar days pass with such payment not having been made.



**14.6 Continued Performance.** During any period commencing upon notice of termination and continuing until the effective date of termination specified in any such notice, Service Provider will perform the Services in accordance with terms and conditions and performance standards in effect as of the date on which notice of termination is given. If this Agreement is terminated by Service Provider for Customer's failure to make undisputed payments, this obligation will be contingent upon Customer's payment in advance each month for the Services. In addition, upon Customer's request, Service Provider will provide to Customer such information and other cooperation as may be reasonably necessary for (i) Customer and/or its outside advisers to prepare requests for proposals or other, similar, documentation related to selection of a successor to Service Provider and (ii) a third party to prepare a reasonably informed, non-qualified offer to perform similar services. The types of information and of cooperation to be provided by Service Provider will be at least as comprehensive as those initially provided by Customer to Service Provider prior to the Effective Date. Service Provider will not be required to produce information concerning its costs (other than any costs from time to time reimbursed by Customer). If Customer terminates this Agreement under Section 14.4.5, then Service Provider will make its Key Personnel available to Customer, if requested, on a full time basis, for up to six (6) months after the effective date of termination, at the rates set forth in Schedule 5.

**14.7 Termination Assistance.** In connection with expiration or any termination of this Agreement, the Parties will, commencing promptly after the giving of any notice of termination or at least one hundred eighty (180) days prior to expiration of this Agreement, jointly develop a plan, in accordance with Schedule 16, Termination Assistance, to effect the orderly transition to Customer or its designee from Service Provider the Services then being performed or managed by Service Provider. Such plan will be completed by the Parties within thirty (30) days and will set forth the tasks and actions to be performed by Service Provider and Customer (as set forth in Schedule 16), the time for completing such tasks and actions, and the criteria for declaring the transition completed. The Parties and their employees and agents will cooperate in good faith to execute such plan and each Party will perform those tasks and actions assigned to it in such plan.

**14.8 Phased or Partial Termination.** Cessation of particular Services may be scheduled in phases by Service Tower via the Change Control Procedure in order to accommodate Customer's business needs. Fees will be reduced proportionally as such Services are phased out and discontinued. If a Service Tower is terminated Termination for Convince Fees identified in Schedule 5 ("Fees") will apply. In the event of a partial termination, Service Provider will provide Termination Assistance related to the affected Services. To the extent that Customer provides Service Provider with not less than thirty (30) days prior notice of such phased or partial termination, the scope of particular Services (such as affected Fees and Service Levels) will be equitably adjusted to the extent necessary to allow for operational dependencies, and phased reduction of Service (or introduction of new service from Service Provider or other sources) all in order to assure orderly, continuous operations with consistent quality of service. In addition, Customer may, one time only per Service Tower, upon sixty (60) days' prior notice, extend the termination date for the Agreement with respect to a Service Tower(s) or all of the Services for up to one hundred eighty (180) additional days.

**14.9 Extension of Services.** At Customer's request, Service Provider will provide to Customer, for up to twelve (12) months after the expiration date of the Term, Renewal Term, or, if applicable, the effective date of termination, any or all of the Services being performed by Service Provider prior to such date, subject to the Fees set forth in Schedule 5 ("Fees"). After any such Extension Term (post Extension Term), Service Provider may, upon mutual agreement, provide such support and service related to termination and transition as Customer may reasonably request at its then-current standard rates. This Agreement will continue to govern the performance of all such Services during such post Extension Term period, except that (i) the charges for such Services will be at the Service Providers then-current standard rates, and (ii) the charge for any Termination Assistance not part of the Services will be Service Provider's then-current standard rates.

**14.10 Specific Performance.** Service Provider acknowledges that, if it were to breach, or threaten to breach, its obligation to provide Customer with Termination Assistance, then (i) Customer may be irreparably harmed, (ii) money damages may not be an adequate remedy, and (iii) continuing performance of Termination Assistance, other Services and the Parties' other respective

obligations would best preserve the status quo pending resolution of any disputes then pending. Accordingly, Customer may seek to enforce Service Provider's obligation to provide Termination Assistance by a preliminary or permanent mandatory injunction, decree of specific performance or other appropriate equitable remedy. Service Provider irrevocably waives any requirement that Customer post any bond or undertaking, or demonstrate irreparable harm or the inadequacy of money damages.

14.11 Survival. The provisions of Article 1 (Interpretation), Article 13 (Compliance and Audit), Article 14 (Term and Termination), Article 15 (Intellectual Property Rights), Article 16 (Customer Data and Intangible Property), Article 17 (Security and Confidentiality) and Schedule 10 (Security Protocol), Article 20 (Governance), Article 21 (Indemnification), Article 22 (Damages), Article 25 (Notices), Article 26 (Non-Solicitation), Article 28 (Severability), Article 30 (Publicity), Article 31 (Governing Law) and Article 35 (No Third Party Beneficiaries) will survive termination or expiration of this Agreement.

## **15. INTELLECTUAL PROPERTY RIGHTS**

15.1 Customer Software and Materials. Neither Service Provider nor any Subcontractor shall have any ownership interest in any Customer Software, Customer Materials or other intellectual property that Customer provides to Service Provider, discloses to Service Provider or allows Service Provider to Use in any way. Subject to Customer obtaining all applicable Consents and to any restrictions contemplated in such Consents (such as payment of applicable fees), Customer grants to Service Provider a limited, non-exclusive and non-transferable right to Use the Customer Software and Customer Materials, directly or through permitted Subcontractors, solely in and for performing the Services pursuant to this Agreement and to the extent permitted under any applicable Third Party Agreements.

15.2 Rights in Deliverables. The Service Descriptions or Statements of Work will specify whether Service Provider has "No Rights," "Limited Rights" or "Full Rights" in the Deliverables. If a Service Description or statement of work does not specify whether Service Provider will have "No Rights," "Limited Rights" or "Full Rights" in the particular Deliverable, then Service Provider will have No Rights in such Deliverable. Unless otherwise expressly provided in a Statement of Work, Service Provider will be solely responsible for (i) obtaining any Consent that may be required to exercise its rights in the Deliverables and (ii) complying with any applicable Third Party Agreement. Service Provider shall also cause all of its employees and Subcontractors engaged in the development of any Deliverables to enter into appropriate agreements with Service Provider assigning and releasing to Service Provider any intellectual property rights they may otherwise assert in any work in any medium created or modified in the course of performing Services.

15.2.1 Service Provider will create the No Rights Deliverables as "works made for hire" or "commissioned works" owned by Customer. To the extent that any No Rights Deliverable is not a "work made for hire" or "commissioned work" owned by Customer, Service Provider hereby irrevocably assigns, and agrees to assign, and will cause Subcontractors to assign, and agree to assign, to Customer without further consideration all of its and their right, title and interest in and to such No Rights Deliverable (but in no event with respect to Service Provider Software or Service Provider Materials identified therein), and to cause its employees and those of its Subcontractors engaged in the preparation of the No Rights Deliverable to waive and agree not to assert any moral rights or reversionary rights. If and to the extent such waivers are deemed invalid, Service Provider will, and will cause its employees and those of its Subcontractors engaged in the preparation of the No Rights Deliverable, to grant to Customer the exclusive, perpetual, irrevocable, worldwide and royalty-free right to use, modify and distribute such items without any requirement of attribution or prior consent. Customer grants to Service Provider, during the term of this Agreement, a limited, non-exclusive and non-transferable right to Use the No Rights Deliverable, directly or through permitted Subcontractors, solely in and for providing the Services to Customer.

15.2.2 Service Provider will create the Limited Rights Deliverables as "works made for hire" or "commissioned works" owned by Customer. To the extent that any Limited Rights Deliverable is not a "work made for hire" or "commissioned work" owned by Customer, Service Provider hereby irrevocably assigns, and agrees to assign, and will cause Subcontractors to assign, and agree to assign, to Customer without further consideration all of its and their right, title and interest in and to such Limited Rights Deliverable, and to cause its employees and those of its Subcontractors engaged in the preparation of the Limited Rights Deliverable to waive and agree not to assert any moral rights or reversionary rights. If and to the extent such waivers are deemed invalid, Service Provider will, and will cause its employees and those of its Subcontractors engaged in the preparation of the No Rights Deliverable, to grant to Customer the exclusive, perpetual, irrevocable, worldwide and royalty-free right to use, modify and distribute such items without any requirement of attribution or prior consent.

15.2.3 Subject to any restrictions specified in the applicable Service Description or statement of work, Service Provider grants to Customer a perpetual, irrevocable, paid-up, royalty-free, worldwide, non-exclusive, sub-licensable but otherwise non-transferable (except to a successor) right to Use the Full Rights Deliverables in connection with its own business; provided, however, that Customer (or its successor) may sub-license any such Full Rights Deliverable to unrelated third parties only for the purpose of providing services to Customer, its Affiliates or their successors.

15.3 Service Provider Software and Materials. Customer shall have no ownership rights in any Service Provider Owned Software and Service Provider Materials that Service Provider provides to Customer, discloses to Customer or allows Customer to Use in any way, including without limitation any such materials incorporated or embedded in any Deliverable, and the assignment of rights contemplated under this Section 15 shall not apply to Service Provider Software or Service Provider Material.

15.3.1 The parties hereto understand and agree that, notwithstanding any provision to the contrary contained in this Agreement, all c-RIM and custom c-RIM technologies and their component parts are the sole Intellectual Properties of Unisys or the software vendors of such c-RIM components and are considered to be the confidential and proprietary property of Unisys. Subject to Termination Assistance, upon termination of the Agreement, c-RIM technologies will be removed from the Customer environment. No licenses for c-RIM technologies and software will be provided beyond the Term of the Agreement.

15.4 Commissioned Work. Neither Service Provider nor any of its Subcontractors (or any of its or their employees) shall have any ownership interest in Commissioned Work, other than Service Provider's continuing rights in and to any Service Provider Materials that may be incorporated or embedded in such Commissioned Work. All Commissioned Works will be considered "works made for hire" or "commissioned works" owned by Customer and, to the extent that any such Commissioned Work may not constitute a "work made for hire" or "commissioned work" owned by Customer, Service Provider hereby irrevocably assigns, and agrees to assign, and will cause Subcontractors to assign, and agree to assign, to Customer without further consideration all of its and their right, title and interest in and to the Commissioned Works, and to cause its employees and those of its Subcontractors engaged in the preparation of the Commissioned Work to waive and agree not to assert any moral rights or reversionary rights excluding any pre-existing Service Provider Materials incorporated or embodied in such Commissioned Work. Service Provider grants to Customer a perpetual, irrevocable, paid-up, royalty-free, worldwide, non-exclusive, sub-licensable and transferable right to Use any such pre-existing Service Provider Materials as part of the Commissioned Work; provided, however, such license shall not extend to separating such pre-existing Service Provider Materials from the Commissioned Work to develop any stand alone product for marketing to third parties.

15.5 Service Provider Responsibilities. Service Provider covenants that all Software Deliverables will consist of source code and documentation sufficient to allow a reasonably knowledgeable and experienced programmer to compile, maintain and support the software. Customer may make such filings and registrations as it deems advisable to obtain patent, copyright or other

protection for Full Rights and Limited Rights Deliverables, Commissioned Works and other Customer intellectual property. Service Provider will provide such assurances, take such action, and execute such further documents and instruments as Customer may reasonably request (at no material cost to Service Provider) in order to carry out the purposes of this Article and, in particular, to register or otherwise secure patent, copyright, trademark, service mark or other intellectual property protection in all countries for Customer's intellectual property.

## **16. CUSTOMER DATA AND INTANGIBLE PROPERTY**

16.1 Customer Data. Neither Service Provider nor any Subcontractor will have any right, title or interest in or to any Customer Data.

16.1.1 Without Customer's approval, Customer Data will not be (i) used or accessed by Service Provider or Subcontractors other than as necessary to provide the Services or otherwise complying with Service Provider's obligations under this Agreement, (ii) disclosed, sold, assigned, leased or otherwise provided to third parties by Service Provider or Subcontractors or (iii) commercially exploited by or on behalf of Service Provider or Subcontractors.

16.1.2 [RESERVED].

16.1.3 Service Provider irrevocably assigns, transfers and conveys, and will cause Subcontractors to assign, transfer and convey, to Customer, without further consideration, any right, title and interest that it or they may possess or claim in and to Customer Data, and to cause its employees and those of its Subcontractors to waive and agree not to assert any moral rights or reversionary rights they may possess in the Customer Data. If and to the extent such waivers are deemed invalid, Service Provider will, and will cause its employees and those of its Subcontractors engaged in the use of Customer Data to grant to Customer the exclusive, perpetual, irrevocable, worldwide and royalty- free right to use, modify and distribute such items without any requirement of attribution or prior consent. Upon request by Customer, Service Provider will, using commercially reasonable efforts, execute or have executed and delivered, and will cause Subcontractors to execute and deliver, any instruments or other documents that may be necessary or desirable under any Law to preserve, or enable Customer to enforce, its rights with respect to Customer Data.

16.2 Customer Intangible Property. Upon Customer's request at any time, and without prejudice to any additional requirements specified in this Agreement, a Service Description or otherwise, Service Provider will (i) provide Customer with physical and electronic access to all or any part of the Customer Data, Customer Software, related documentation or other intangible property of Customer, such as all work-in-progress (collectively, "Customer Intangible Property") in Service Provider's possession or control, (ii) promptly return to Customer, in the format and on the media then in use, all or any part of such Customer Intangible Property and (iii) erase or destroy all or any part of such Customer Intangible Property, in each case to the extent so requested by Customer; provided, however, that Service Provider may retain a copy thereof to the extent, and for so long as, reasonably necessary to perform the Services, Termination Assistance or other activities reasonably related to termination or expiration, unless otherwise instructed by Customer. Service Provider has no right to retain, encrypt, corrupt or destroy any Customer Intangible Property (other than retaining archival copies, if any, authorized by Customer), and waives any and all statutory or common law liens, claims of lien or similar rights, remedies or encumbrances that may now or hereafter exist and might limit or condition Service Provider's unconditional obligations to return Customer Intangible Property. The foregoing requirement is in addition to any other requirements contained in applicable Service Descriptions, Procedures Manuals or other documentation concerning periodic deliveries of Customer Intangible Property.

## **17. SECURITY AND CONFIDENTIALITY**

17.1 Security Protocol. Service Provider will develop and implement, or satisfy Customer that Service Provider has developed and implemented, and maintain throughout the Term a

comprehensive Security Plan that meets or exceeds Customer's Security Protocol as set forth in Schedule 10. The Security Plan will be no less rigorous than Service Provider's security policies in effect as of the Effective Date.

17.1.1 Customer may revise the Security Protocol from time to time during the Term.

17.1.2 If Customer changes such Security Protocol in a manner that results in substantial cost increases to Service Provider, Service Provider's compliance with the new Security Protocol will be subject to the Change Control Procedures. Customer will give Service Provider reasonable advance notice of changes in the Security Protocol.

17.1.3 If Service Provider intends to implement a Change to the Service Provider's Security Plan (pursuant to Customer's request), Service Provider will notify Customer. Service Provider will not, without Customer's approval, implement any such Change if, in Customer's reasonable judgment, such Change would cause the Service Provider's Security Plan to fail to meet the standards set forth in the Security Protocol.

17.1.4 If Service Provider or Subcontractors discover or are notified of a breach or potential breach of security relating to the Security Protocol, Service Provider will – promptly (i) notify the Customer Account Executive of such breach or potential breach and (ii) use commercially reasonable efforts to remedy the effects of the breach or potential breach.

#### 17.2 Access Controls.

17.2.1 Service Provider shall at all times use generally accepted industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to and use of systems and the networks involved with the provision or receipt of Services, including the implementation and deployment network management and maintenance applications and tools, the use of appropriate encryption technologies, and the other security-related Services described in this Agreement.

17.2.2 In addition, all Service Provider personnel (including personnel of any Subcontractors) shall be subject to, and shall at all times conform to, all of Customer's policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel, also as set forth in the Security Protocol. Any violation or disregard of such Security Protocol by an Service Provider personnel shall be cause for denial of access of such Person to Customer's systems or property. Provider shall exercise due care and diligence to prevent any injury to person or damage to property while on Customer's premises.

17.2.3 Prior to performing any Services, Service Provider personnel who will access the Customer's systems, computer data or software, including Customer Data, shall execute a confidentiality and non-disclosure agreement concerning access protection and data security consistent with the access protection and data security requirements in this Agreement. At all times during the Term, Service Provider shall, and shall cause it personnel to, fully comply with all of Customer's policies and procedures regarding data access and security, including those prohibiting or restricting remote access to the systems and Customer Data, as set forth in the Security Protocol. Customer shall authorize, and Service Provider shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Service Provider permit any such mechanisms to be shared or used by other than the individual Service Provider personnel to whom issued. Service Provider shall provide each Service Provider personnel with only such level of access as is required for such individual to perform his or her assigned tasks and functions. From time to time throughout the Term, upon request from Customer, Service Provider shall provide Customer with an accurate, up-to-date list of those Service Provider Personnel having access to Customer's systems, software, or data, and the respective security level or clearance assigned to each such individual.

17.2.4 Customer may, in its discretion, designate certain areas, facilities, or systems as ones that require a higher level of security and access control. Customer shall notify Service Provider in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Service Provider shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Service Provider shall, and shall cause the its personnel to, fully comply with and abide by all such enhanced security and access measures and procedures as of such date.

17.2.5 Any material breach or violation by Service Provider or its Subcontractors, or the employees or agents of any of the foregoing or of the Security Protocol shall be deemed a material breach of a material obligation of Service Provider under this Agreement, and any chronic or critical breach by Service Provider or its Subcontractors, or the employees or agents of any of the foregoing, or of the Security Protocol shall be deemed an incurable and material breach of a material obligation of Provider under this Agreement. The Parties agree that for the purposes of this Section a breach shall only be deemed material if: (a) Service Provider has failed to act in material accordance with the Security SOW, the Security Policies or the security provisions of the Procedures Manual; or (b) Provider has failed to use generally accepted industry best practices and methods in performing its obligations with respect to security services.

17.3 Data Breach Remediation. For the purposes of this Agreement, a "Data Breach" means an event or incident involving a potential or actual loss, theft, damage or destruction of, or unauthorized access to, use or disclosure of, Customer Data (inclusive of Customer Confidential Information or personally identifiable information of Customer). To the extent any Data Breach occurs, Service Provider shall cooperate with Customer to respond to and remediate such Data Breach. Subject to a root cause analysis to determine causation and fault through which it is determined that Service Provider has breached any of its obligations (to any extent) under this Agreement, Service Provider shall be responsible for the cost of remediating such Data Breach and shall reimburse Customer for the following incurred costs (collectively, "Data Breach Costs"): (a) the preparation and mailing or other transmission of notification to data subjects or governmental authorities or the media containing the information related to the Data Breach; (b) the performance of any security review in connection with such Data Breach; (c) the portion of any fine or other monetary penalty imposed on Customer by a governmental authority for a violation of applicable law pertaining to such Data; (d) reasonable attorneys' fees for addressing Customer's obligations related to the Data Breach; (e) call center expenses needed to respond to inquiries from data subjects related to the Data Breach; (f) credit monitoring for data subjects affected by the Data Breach; (g) the performance of a forensic investigation by a consultant to determine the cause of the Data Breach and the extent of the disclosure; and (h) other remediation expenses and reasonable assistance to data subjects as required to comply with applicable law.

17.4 Disabling Devices. Service Provider shall use generally accepted industry best practices regularly to identify, screen, and prevent any Disabling Device in resources utilized by Service Provider or Customer (if managed by Service Provider) in connection with the provision or receipt of the Services and shall not itself knowingly or intentionally install (and shall prevent its Subcontractors from knowingly and intentionally installing) any Disabling Device in resources utilized by Service Provider, Customer, or any Subcontractor, in connection with the provision or receipt of the Services. A "Disabling Device" is a virus, timer, clock, counter, time lock, time bomb, or other limiting design, instruction, or routine that would purposely and inappropriately erase data or programming or cause any resource to become inoperable or otherwise incapable of being used in the full manner for which such resource was intended to be used. Service Provider shall assist Customer in reducing and mitigating the effects of any Disabling Device discovered in any resource related to the provision or receipt of the Services, especially if such Disabling Device is causing a loss of operating efficiency or data. Timers, clocks, counters, and time locks included as part of any commercial software by the manufacturer of such software shall not be considered Disabling Devices for purposes of this Section.

17.5 Confidentiality. Without prejudice to any additional requirements contemplated under the Security Protocol, the recipient of Confidential Information will maintain its confidentiality at least to the

same extent and manner as the recipient protects its own Confidential Information, except as otherwise required by law.

17.5.1 Neither Customer nor Service Provider will disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other Party in any form to, or for the use or benefit of, any person or entity without such other Party's consent, and subject to the terms of this Agreement.

17.5.2 Notwithstanding the foregoing, Customer and Service Provider will be permitted to disclose relevant aspects of the other's Confidential Information to its officers, directors, agents, professional advisors, contractors, subcontractors and employees and to the officers, directors, agents, professional advisors, contractors, subcontractors and employees of its Affiliates, to the extent such disclosure is not restricted under any Authorization, Consent, Assigned Agreement or Managed Agreement, but only to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations or the determination, preservation or exercise of its rights and remedies under this Agreement.

17.5.3 The recipient of any Confidential Information will take all reasonable measures to safeguard that Confidential Information of the disclosing Party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, contractors, subcontractors and employees, whether during or after the term of their employment or engagement by the recipient.

17.5.4 When Service Provider provides Customer's Confidential Information to any such entity, including any Affiliate, Service Provider will require such entity to sign, or confirm that it has signed, a confidentiality agreement with terms substantially the same as those described in this Article.

17.5.5 Upon expiration or termination of the Agreement, after completion of transition to a successor service provider, each Party will return or destroy the other Party's Confidential Information.

17.5.6 The obligations in this Article will not restrict any disclosure made pursuant to any Law. The recipient will give prompt notice to the disclosing Party of any demand for such disclosure.

17.5.7 Service Provider acknowledges that Customer is a public agency subject to the requirements of the California Public Records Act. Service Provider may submit information to Customer that it considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act, or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by Service Provider as Confidential Information, Customer shall within a reasonable time notify Service Provider that such request has been made, by email to an address designated by Service Provider for receipt of notices. Service Provider shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor. If Service Provider takes no such action, after receiving the foregoing notice from the Customer, then the Customer shall be permitted to comply with the Requestor's demand and is not required to defend against it. So long as the Customer complies with the provisions of notification set forth in this Agreement, the Customer shall not be liable for, and Service Provider and Customer hereby release each other from, any liability for any damages arising from any requirement under the law that the Customer release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

17.6 Unauthorized Use or Disclosure. Without limiting either Party's rights in respect of a breach of this Article, each Party will (i) promptly notify the other Party of any attempted or actual unauthorized possession, use or knowledge of the other Party's Confidential Information by any person or entity that may become known to such Party; (ii) promptly furnish to the other Party full details of the attempted or actual unauthorized possession, use or knowledge; and (iii) assist the other Party in investigating or preventing the recurrence of any attempted or actual unauthorized possession, use or knowledge of Confidential Information. Each Party will reasonably cooperate with the other Party in any investigation or litigation deemed necessary by the other Party to protect its confidentiality or proprietary rights.

17.7 Facilities Segregation. Service Provider agrees to segregate Customer Data and information logically from its other customers' data and information.

## **18. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

18.1 Customer. Customer represents, warrants and covenants that:

18.1.1 Customer is a chartered municipal corporation;

18.1.2 Customer has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

18.1.3 the execution, delivery and performance of this Agreement by Customer (i) has been duly authorized by Customer and (ii) will not conflict with, result in a breach of or constitute a default under any other agreement to which Customer is a party or by which Customer is bound;

18.1.4 Customer is in compliance with all Laws, and Regulatory Requirements, applicable to Customer, except where the failure to be in compliance would not have a material adverse effect on Customer's ability to fulfill its obligations under this Agreement; and

18.1.5 there is no outstanding litigation, arbitrated matter or other dispute to which Customer is a party which, if decided unfavorably to Customer, would reasonably be expected to have a material adverse effect on Customer's ability to fulfill its obligations under this Agreement.

18.2 Service Provider. Service Provider represents, warrants and covenants that:

18.2.1 Service Provider is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Delaware;

18.2.2 Service Provider has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement;

18.2.3 The execution, delivery, and performance of this Agreement by Service Provider (i) has been duly authorized by Service Provider and (ii) will not conflict with, result in a breach of or constitute a default under any other agreement to which Service Provider is a party or by which Service Provider is bound;

18.2.4 Service Provider is duly licensed, authorized, or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on Service Provider's ability to fulfill its obligations under this Agreement;

18.2.5 Service Provider is in compliance with all Laws and Regulatory Requirements, applicable to Service Provider except where the failure to be in compliance would not have a



material adverse effect on Service Provider's ability to fulfill its obligations under this Agreement;  
and

18.2.6 There is no outstanding litigation, arbitrated matter, or other dispute to which Service Provider is a party which, if decided unfavorably to Service Provider, would reasonably be expected to have a material adverse effect on Service Provider's ability to fulfill its obligations under this Agreement.

18.3 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR A STATEMENT OF WORK, ALL IMPLIED AND STATUTORY WARRANTIES AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED OR STATUTORY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR SATISFACTORY QUALITY ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

18.4 Notwithstanding Section 15.11, and unless a separate warranty term is specified, the representations and warranties of the Parties under this Article 19 shall survive expiration or termination of this Agreement only with respect to claims that accrued during the Term (for clarity this applies to the provision of Termination Assistance and extension of Services under Section 14.9).

## **19. ADDITIONAL COVENANTS**

19.1 Customer Covenants. Customer covenants and agrees with Service Provider that the Customer Software and Customer Materials will not infringe upon the proprietary rights of any third party (except as may have been caused by a modification or unauthorized Use by Service Provider or Subcontractors).

19.2 Service Provider Covenants. Service Provider covenants and agrees with Customer that:

19.2.1 None of the Services, Deliverables, Service Provider Software, Service Provider Materials, Commissioned Work or any enhancement or modification to the Customer Software or Customer Materials performed by Service Provider or Subcontractors, or any other work or item provided to Customer by Service Provider or Subcontractors or used in the performance of the Services, infringe upon or misappropriate, or will infringe upon or misappropriate the proprietary rights of any third party (except as may have been caused by (i) Service Provider's compliance with Customer's designs, but only to the extent that there were no non-infringing means to comply with Customer's designs or (ii) a modification or unauthorized Use or combination by Customer or its agents);

19.2.2 Service Provider will take commercially reasonable measures, as described in the SOWs, to prevent the introduction into or proliferation of any Malicious Code into the Deliverables, Customer Software or Customer's operating systems or environment. If Malicious Code is found to have been introduced into any such systems or deliverables Service Provider shall immediately notify Customer of the introduction and with Customer's assistance reduce the effects of such Malicious Code, and if the Malicious Code causes an interruption of the Services, a loss of operational efficiency, or loss of data, Service Provider shall assist Customer to the same extent to mitigate and restore such loss;

19.2.3 Without the consent of Customer, Service Provider will not insert into the Deliverables, Customer Software or any Service Provider Software or Service Provider Materials used to provide the Services any code that would have the effect of disabling or otherwise shutting down all or any portion of Customer's operating systems or environment;

19.2.4 Upon Customer's request, or promptly following its own discovery, Service Provider shall, as part of the Services, correct any errors in reports, transactions, Customer Data, processing or other Services only to the extent attributable to errors and omissions of Service Provider, its employees and subcontractors, or to failures of computers, networks, systems or other resources provided by Service Provider. If Service Provider is not responsible for such

errors in reports, transactions, Customer Data, processing or other Services, the Parties will utilize Service Provider personnel in accordance with Section 4.8 (Prioritization of Scheduling);

19.2.5 Without the consent of Customer, Service Provider will not insert into any Deliverables, Customer Software or Customer's operating systems or environment any code that is made generally available to the public on open source code licensing terms or on other terms that would require Customer to make the source code thereof publicly available;

19.2.6 Service Provider will have and maintain adequate facilities, equipment and a duly qualified staff as necessary to perform the Services in an efficient, professional and timely manner and as described in each Service Description;

19.2.7 Service Provider will perform the Services in a timely, efficient and professional manner in accordance with industry standards, without prejudice to Service Provider's obligation to meet any applicable Service Levels;

19.2.8 [RESERVED];

19.2.9 The Deliverables and any and all fixes, updates, enhancements and modifications thereto provided by Service Provider, will function in accordance with their Specifications prior to implementation and for the period specified in the applicable Statement of Work or other commissioning document, unless such malfunction or non-conformance with Specifications is caused by (i) a modification other than by or on behalf of Service Provider, (ii) a use contra-indicated in the Statement of Work or Service Provider provided documentation or (iii) defects in Customer supplied components or materials; and

19.2.10 Service Provider will warrant that software and other Deliverables will in all material respects conform with mutually agreed upon specifications and standards and be free from material defects or nonconformities for a period of at least one hundred and twenty (120) days after their first production use. Hardware, when supplied will be subject to normal manufacturer's warranties unless otherwise agreed. Service Provider also warrants that Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the Information Technology Infrastructure Library Best Practices, (currently found at [www.itil.com](http://www.itil.com)) and in compliance in all material respects with the Statements of Work and the Service Levels.

## **20. GOVERNANCE**

20.1 Customer Services Director. Customer will appoint an individual ("Customer Services Director") who from the date of this Agreement will serve as the primary Customer representative under this Agreement. The Customer Services Director will have overall responsibility for managing and coordinating the performance of Customer's obligations under this Agreement and will be authorized to act for and on behalf of Customer with respect to all operational matters relating to this Agreement. Notwithstanding the foregoing, the Customer Services Director may, upon notice to Service Provider, delegate such of his or her responsibilities to other Customer employees, as the Customer Services Director deems appropriate.

20.2 Governance. The Parties will govern their relationship in accordance with the Governance Model set forth in Schedule 17 ("Governance and Service Provider Key Personnel"). Each Party will appoint duly qualified, employees to represent the Party in the applicable governance positions set forth in the Governance Model in accordance with the provisions of Schedule 17 ("Governance and Service Provider Key Personnel"). Each Party will cause its representatives to devote the time necessary to meet their respective responsibilities (such as the time as may be specified by the Agreement or Schedule 17) and meet regularly in accordance with Schedule 17 ("Governance and Service Provider Key Personnel"). Each Party will be responsible for its representatives' execution of their respective obligations and responsibilities under the Governance

Model. The Governance Model will contain the processes and procedures that the Parties will use to review and verify Service Provider's compliance with Law.

**20.3 Informal Dispute Resolution Procedures.** Any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (such as disputes as to the creation, validity, interpretation, breach or termination of this Agreement) (a "Dispute") will be considered in accordance with the dispute resolution procedures set forth in this Article 20 and in Schedule 17 ("Governance and Service Provider Key Personnel"). The dispute resolution process will be initiated upon receipt by a Party of a notice from the other Party specifying the nature of the Dispute. Unless the Customer Account Executive and Service Provider Account Executive otherwise agree in writing, either Party may pursue its rights and remedies under this Article 20 after the earlier of (i) the exhaustion of the negotiation and escalation procedures set forth in the Schedule 17 ("Governance and Service Provider Key Personnel") and (ii) the date that is forty-five (45) days after the receipt of the dispute notice. Notwithstanding the foregoing, either Party may commence proceedings if delay in doing so would be prejudicial, because of the need for immediate provisional remedies, imminent expiration of applicable statutes of limitation, or other good cause.

**20.4 Resolution Without Proceedings.** Service Provider and Customer intend to use reasonable measures to avoid the litigation of any dispute under this Agreement. As a result, the Parties mutually agree that any Dispute arising under or in connection with this Agreement will be resolved using the alternative dispute resolution provisions and procedures described in the Sections below and in Schedule 17 ("Governance and Service Provider Key Personnel").

20.4.1 Except as otherwise agreed, Service Provider and Customer will each bear all of their own expenses incurred during the procedures and will pay one-half of any applicable fees of any mediator or third party agency engaged to assist in resolution of disputes short of legal proceedings.

20.4.2 All negotiations pursuant to this Article 20 are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. No proposals, offers, counter-offers or other communications will be admissible in evidence in any proceeding for any purpose; provided, however, that this will not be construed to render confidential, inadmissible or non-discoverable any otherwise admissible documents or other evidence merely because they were referred to, transmitted or otherwise used in any such settlement negotiations.

**20.5 Negotiation.** Upon the written notice by either Party, a Dispute will be submitted to the Customer Account Executive and Service Provider Account Executive, who will meet and employ their best efforts to negotiate an amicable resolution of the Dispute. Unless the Parties otherwise agree, this meeting and negotiation will occur not later than ten (10) days from the date of submission of the Dispute to the Customer Account Executive and Service Provider Account Executive, whichever occurs last. If the Account Executives fail to resolve the dispute by negotiation, the Dispute will be escalated within the Customer and Service Provider organizations in accordance with Schedule 17 ("Governance and Service Provider Key Personnel").

**20.6 Mediation.** In the event the Parties fail to resolve the Dispute by negotiation, then the Parties will submit the Dispute to non-binding mediation, which will be held in Santa Clara County, CA in accordance with the process and procedures set forth in Schedule 17 ("Governance and Service Provider Key Personnel"), and the Rules (defined below). Unless the Parties agree otherwise, the completion of the mediation process will not exceed thirty (30) days from initial submission to conclusion. Any mediator appointed shall have a minimum of three (3) years of experience in the information technology outsourcing industry.

**20.7 The Parties may agree on one mediator.** If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement. For any contract dispute, mediation under this

section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only.

20.8 Certain Legal Proceedings. Notwithstanding the foregoing, the Parties agree that:

20.8.1 If a controversy or claim relates in any way to a lawsuit brought by a third party against one or both of the Parties, either Party may, at its option, file a cross-complaint against the other Party in such lawsuit with respect to the controversy or claim, in which case the controversy or claim will be resolved by such court.

20.8.2 If a controversy or claim relates in any way to the interpretation, breach or threatened breach of provisions of this Agreement concerning Confidential Information or intellectual property, it may, at either Party's option, be resolved by a court of competent jurisdiction.

20.9 Continued Performance. Service Provider will continue to provide the Services during the pendency of any of the proceedings commenced pursuant to this Article 20, and Customer will continue to perform its obligations (including but not limited to the making of payments to Service Provider), all in accordance with this Agreement).

20.10 Jurisdiction. The Parties hereby submit and consent to the exclusive jurisdiction of competent courts within the County of Santa Clara, California. They irrevocably agree that all actions or proceedings relating to and permitted this Agreement will be litigated in those courts. Each of the Parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding.

20.11 [RESERVED].

20.12 Injunctive Relief. The Parties agree that in the event of any breach or threatened breach of any provision of this Agreement concerning (i) Confidential Information, (ii) intellectual property rights or (iii) other matters for which equitable rights are expressly provided in this Agreement, money damages may not be an adequate remedy. Accordingly, the non-breaching Party may seek preliminary or permanent, mandatory or prohibitory injunction or order from a court of competent jurisdiction.

## 21. INDEMNIFICATION

21.1 Customer Indemnity. Customer will indemnify, defend and hold Service Provider, its officers, directors, employees, agents and Affiliates, and their respective officers, directors, employees and agents (collectively, the "Service Provider Indemnitees"), harmless from and against, any Claims resulting from, arising out of or relating to Customer's gross negligence or willful misconduct; or

21.1.1 relating to a fraudulent inaccuracy, untruthfulness or breach of any material warranty, representation or covenant made by Customer under this Agreement;

21.1.2 relating to a violation of Law by Customer;

21.1.3 relating to any amounts, including taxes, interest and penalties, assessed against Service Provider that are the obligation of Customer;

21.1.4 arising out of or relating to Customer's breach of its obligations with respect to Confidential Information;

21.1.5 relating to personal injury (including death) or property loss or damage resulting solely from Customer's acts or omissions.

21.2 Service Provider Indemnity. In addition to the obligations set forth elsewhere in this Agreement, Service Provider shall defend, indemnify and hold harmless Customer from and against all claims, actions, and causes of action of any form or type, asserted against them by a third party ("Claims"), and shall pay those damages, fines, liabilities and losses that are agreed to in settlement by the Service Provider or included in a final order and all related costs and expenses (including reasonable attorneys' fees and other reasonable legal, investigative and expert consulting costs, fees and expenses) as incurred by the Customer before the Service Provider's assumption of the defense for:

21.2.1 bodily injury or death to any person or damage to any tangible personal property or real property arising from or related to the performance of the services by Service Provider or its representatives;

21.2.2 any employment related claims brought by the employees or Subcontractors of Service Provider, including:

21.2.2.1 a work-related injury of Service Provider employees or its agents unless Customer's intentional act was the proximate cause of such injury,

21.2.2.2 employee benefits of Service Provider employees,

21.2.2.3 any aspect of the Service Provider's personnel's employment relationship with Service Provider or the termination of the employment relationship with Service Provider, including but not limited to any claims for co-employment of the Service Provider personnel with Customer,

21.2.2.4 any employment claims asserted by its Subcontractors,

21.2.2.5 any claims asserted in connection with the Assigned Agreements or Managed Agreements as a result of Service Provider's act or omission, or

21.2.2.6 failure to provide health insurance coverage for Service Provider personnel pursuant to applicable federal and state laws.

21.2.3 Any third-party loss or damage arising from or relating to a breach of any contractual obligation by Service Provider (including but not limited to the contractual obligations set forth in this Agreement, or in any agreement between Service Provider and a subcontractor), fraudulent inaccuracy, untruthfulness, or breach of any material warranty, representation, or covenant made by Service Provider under this Agreement;

21.2.4 Any third-party loss or damage arising from or relating to a violation of Law by Service Provider;

21.2.5 Any loss or damage relating to any amounts, including taxes, interest and penalties, assessed against Service Provider that are the obligation of Service Provider;

21.2.6 Any third-party loss or damage arising out of or relating to Service Provider's breach of its obligations with respect to Confidential Information, Data Security and Confidentiality (including but not limited to Security Protocol and Access Controls), Compliance with Laws and applicable security standards.

21.2 Intellectual Property Indemnity. Subject to the provisions of this Section 21.2 Customer and Service Provider each agree to defend, indemnify and hold harmless the other against any third party action to the extent that such action is based on a claim that the Customer Software or Customer Materials, in the case of Customer, and the Services, the Deliverables, the Service Provider Software or the Service Provider Materials, in the case of Service Provider, or the Confidential Information provided by or on behalf of the other Party (each an "Indemnified Item"), (i) infringes a copyright under United States or other applicable law, (ii) infringes a patent granted under United States or other applicable laws, or (iii) constitutes an unlawful disclosure, use or misappropriation of another party's trade secret. The

indemnitor will bear the expense of such defense and pay any damages and reasonable attorneys' fees that are attributable to such claim finally awarded by a court of competent jurisdiction.

21.2.1 If an Indemnified Item becomes the subject of a claim under this Section 21.2, or in the indemnitor's opinion is likely to become the subject of such a claim, then the indemnitor may, at its option, (i) modify the Indemnified Item to make it non-infringing or cure any claimed misuse of another's trade secret, provided such modification does not adversely affect the functionality of the Indemnified Item, (ii) procure for the indemnitee the right to continue using the Indemnified Item pursuant to this Agreement, or (iii) replace the Indemnified Item with an Indemnified Item that is substantially equivalent that is non-infringing or that is free of claimed misuse of another's trade secret. Any costs associated with implementing any of the above alternatives will be borne by the indemnitor. If none of the foregoing courses of action is practical, the allegedly infringing Item will be withdrawn, and the scope, charges and Service Levels will be equitably adjusted to reflect such withdrawal.

21.2.2 With respect to any Software provided or developed by a Party pursuant to this Agreement, such Party will have no liability to the other Party under this Section 21.2.2 (i) to the extent that any claim of infringement is based upon the use of the Software in connection or in combination with equipment, devices or Software not supplied by that Party or use of the Software in a manner for which the Software was not designed, (ii) for infringements that arise solely as a result of the implementation by that Party of functionality requirements presented by the other Party where there is no non-infringing alternative to such implementation, and the other Party has been so advised by that Party prior to implementation, and (iii) for fixes, updates, modifications, enhancements and improvements to the Software made by any Party other than that Party or its subcontractors (unless directed to do so by the other Party).

21.2.3 This Section 21.2 states the entire liability of the indemnifying Party and the indemnified Party's sole and exclusive remedies for patent and copyright infringement or misappropriation and trade secrets misappropriation.

21.3 Reserved.

21.4 Indemnitee Responsibilities. If any third-party claim is commenced against a Party entitled to indemnification under this Article, the indemnitee will provide notice of the claim and copies of all related documentation to the indemnitor. Such notice and documentation will be provided as promptly as possible. The indemnitee will cooperate, at the cost of the indemnitor, in all reasonable respects with the indemnitor and its attorneys in the investigation, trial and defense of such claim and any appeal. The indemnitee may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal. In such case, the indemnitor will cooperate with the indemnitee's attorneys.

21.5 Settlement. An indemnitor will have no liability with respect to any settlement reached without its prior written consent. Settlements of indemnified claims will be subject to the indemnitee's approval, which will not be unreasonably withheld or delayed; provided, however, that such consent may be given or withheld in the indemnitee's sole discretion to the extent the settlement admits liability, stipulates to any declaratory or equitable remedy, or affects the indemnitee's intellectual property or Confidential Information.

21.6 Reserved.

21.7 Subrogation. In the event an indemnitor indemnifies an indemnitee pursuant to this Article, the indemnitor will, upon payment in full of such indemnity, be subrogated to all of the rights of the indemnitee with respect to the Claim to which such indemnity relates.

21.8 Service Provider Warranties. It is understood by the Parties that the indemnity provisions herein are distinct from the performance warranties as provided in the Agreement and its Schedules. Service Provider's acts and conduct which are related to its performance under this Agreement and its

Schedules are not subject to the indemnity provisions of Article 21, but are instead subject to warranties, covenants, and promises to perform as described in Articles and Schedules, as they may be amended from time to time by the Parties in accordance with this Agreement.

## **22. DAMAGES**

22.1 Exceptions to Limitations. In addition to the liability provisions set forth elsewhere in this Agreement, this Article 22 does not exclude or limit liability for (i) either Party's indemnification obligations with respect to Claims under Article 21, Indemnification, (ii) either Party's breach of Article 13 "Compliance and Audit" or Article 16 "Customer Data and Intangible Property," (iii) a Party's gross negligence, fraud, or willful misconduct, (iv) claims for bodily injury or death, or damage to tangible personal property arising from negligent or otherwise wrongful action or failure to act by Service Provider or Service Provider's personnel. To remove doubt and uncertainty, nothing in this Article 22 shall be deemed to decrease or otherwise affect application of full policy limits to claims or losses covered by the various types of insurance required under this Agreement.

22.2 Disclaimer of Indirect and Punitive Damages. Except as otherwise set forth in this Agreement, in no event shall either Party, its affiliates, suppliers, or subcontractors be liable for: (i) indirect, incidental, or punitive damages; (ii) lost profits, loss of use, savings or loss of revenue (whether direct or indirect); (iii) damage to, or loss of, data except as specified in the paragraph below; (iv) loss of goodwill or other diminution in the value of its business. The following costs and expenses will be considered direct damages and neither Party will assert that they are indirect or incidental damages or lost profits to the extent they arise directly from a Party's failure to perform in accordance with this Agreement:

22.2.1 costs and expenses to repair, recreate from the original documents of the Customer or reload any lost, stolen or damaged Customer Data;

22.2.2 costs and expenses to implement a work-around in respect of any failure to provide the Services;

22.2.3 costs and expenses to, replace lost, stolen or damaged hardware, Software or other materials;

22.2.4 [RESERVED];

22.2.5 cover damages, such as incremental costs and expenses incurred to procure the Services or corrected Services in- house or from an alternate source;

22.2.6 [RESERVED];

22.2.7 [RESERVED];

22.2.8 payments, fines, penalties or interest imposed by a governmental body or regulatory agency other than the Customer for failure to comply with requirements or deadlines.

22.3 Limitation on Service Provider Liability. Except as stated elsewhere in the Agreement, Service Provider's aggregate liability, including its affiliates, suppliers and subcontractors, for damages to Customer during the entire Term will not exceed the total Fees for the twelve (12) months immediately preceding the last act or omission giving rise to such claim for liability, unless the liability arises out of an act or omission during the first twelve (12) months after the Effective Date, in which case the Service Provider's aggregate liability will not exceed the estimated amount of Fees that would be payable during the first twelve (12) months of the Agreement.

22.4 Limitation on Customer Liability. Customer's aggregate liability for damages to Service Provider during the entire Term of the Agreement will not exceed the total Fees for the twelve (12) months immediately preceding the last act or omission giving rise to such claim for liability, unless the

liability arises out of an act or omission during the first twelve (12) months after the Effective Date, in which case Customer's aggregate liability will not exceed the estimated amount of Fees that would be payable during the first twelve (12) months of the Agreement.

**22.5 Data Breach Cap.** THE MONETARY LIABILITY OF SERVICE PROVIDER GLOBALLY (INCLUSIVE OF AFFILIATES AND SUBCONTRACTORS OF PROVIDER) FOR ALL DATA BREACH CLAIMS ARISING HEREUNDER, INCLUDING CLAIMS RELATING TO ARTICLE 17 "SECURITY AND CONFIDENTIALITY" AND SCHEDULE 10 "SECURITY PROTOCOL", AND INCLUSIVE OF INDEMNITY AND CONFIDENTIALITY CLAIMS RELATED TO DATA BREACH, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE LIMITED TO THE GREATER OF EITHER: (1) AN AMOUNT EQUAL TO TWO TIMES (2X) THE TOTAL FEES PAID (OR EXPECTED TO BE PAID, IF THE CLAIM ARISES IN THE FIRST TWELVE MONTHS) UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH SUCH CLAIM AROSE; OR (2) TWENTY MILLION DOLLARS (\$20,000,000).

**22.6 Negotiated Risk Allocation.** The Parties expressly acknowledge that the limitations and exclusions set forth in this Article have been the subject of active and complete negotiation between the Parties and represent the Parties' agreement based upon the level of risk to the Parties associated with their respective obligations under this Agreement and the payments provided hereunder to Service Provider for its performance of the Services.

## **23. INSURANCE**

**23.1 General.** Service Provider will maintain insurance during the term of this Agreement as set forth in Schedule 29 ("Customer Insurance Requirement"). Service Provider will also cause its Subcontractors who perform Services at Customer Service Locations to maintain, or will maintain for such Subcontractors, insurance during the term of this Agreement as set forth in Schedule 29 Customer Insurance Requirement except with respect to limits.

**23.2 Damage to Property.** Service Provider is responsible for the risk of loss of, or damage to, any property of Customer at a Service Provider Service Location, unless such loss or damage was caused by the acts or omissions of Customer or an agent of Customer. Customer is responsible for the risk of loss of, or damage to, any property of Service Provider at a Customer Service Location, unless such loss or damage was caused by the acts or omissions of Service Provider or a Subcontractor.

## **24. FORCE MAJEURE**

**24.1 Excuse from Performance.** If and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, acts of a public enemy, acts of a nation or any state, territory, province or other political division, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, theft, quarantine restrictions, freight embargoes or any other similar cause beyond the reasonable control and without the fault or negligence of such Party (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed Party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues.

**24.1.1** The foregoing excuse from non-performance is conditioned upon such Party continuing to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay, through the use of alternate sources, workaround plans, backup or emergency power, redundant telecommunications circuits, or other means.

**24.1.2** Notwithstanding the foregoing, the acts or omissions of a Party's agents, subcontractors, representatives, materialmen, suppliers or other third parties providing products



or services to such Party will not constitute a Force Majeure Event (unless such acts or omissions are themselves the product of a Force Majeure Event).

24.1.3 The occurrence of a Force Majeure Event does not excuse, limit or otherwise affect Service Provider's obligation to provide either normal recovery procedures or any other Disaster Recovery services specified in this Agreement or in any Service Description unless such Services themselves are prevented by the Force Majeure Event.

24.2 Responsibilities of Parties. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event will:

24.2.1 Immediately notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event and such Party's good faith estimate of the likely duration of such Force Majeure Event.

24.2.2 With the cooperation of the other Party, exercise all reasonable efforts to mitigate the extent of any non-performance, hindrance or delay caused by a Force Majeure Event and any adverse consequences of such Force Majeure Event, such as, in the case of Service Provider, (i) performance of required work or the provision of the Services with the use of Service Provider's qualified management or other employees or Subcontractors, as permitted by this Agreement, and (ii) cooperating with Customer's efforts to secure necessary replacement services from third party vendors and suppliers.

24.2.3 [RESERVED].

24.2.4 Immediately notify the other Party of the cessation of such Force Majeure Event.

24.3 Alternative Sources. Within two (2) hours of the occurrence of a Force Majeure Event, Customer and Service Provider will determine the extent to which, and the duration that, the Force Majeure Event is likely to prevent Service Provider from performing its obligations in accordance with this Agreement and whether Service Provider is likely to promptly procure a suitable temporary alternate source for the affected Services.

24.3.1 If any Force Majeure Event prevents, hinders or delays performance of any of the Services, and Service Provider is unable to promptly (but in no event later than 48 hours) provide a suitable temporary alternate source for the affected Services, Customer may, without payment of Termination Fees, procure such Services from an alternate source and suspend Service Provider's provision of such Services for the duration of the Force Majeure Event pursuant to an agreement executed between Customer and such alternate source in respect of the provision of such services. Customer shall be entitled to reimbursement from Service Provider (with such reimbursement not to cover any period in excess of ninety (90) days) for the costs and expenses of such alternate provision of Services to the extent that said costs and expenses exceed the amount that Customer would have paid Service Provider hereunder for such Services. If Service Provider resumes provision of Services within ninety (90) days, then reimbursement by Service Provider to Customer pursuant to this Section for such costs and expenses of alternative source(s) shall be Customer's sole and exclusive remedy for Service Provider's failure to promptly provide a suitable temporary alternate source for affected Services during a Force Majeure Event. If Service Provider is unable to resume provision of Services within ninety (90) days, Customer shall be entitled to seek any and all remedies available under contract, law, or equity.

24.3.2 Subject in all cases to Section 14.4.4, for the duration of the agreement executed between Customer and an alternate source for affected Services as described in 24.3.1. Customer is not obligated to continue paying Service Provider for the affected services.

24.3.3 Customer shall have the right to terminate this Agreement without liability or the payment of termination fees in accordance with Section 14.4.5.

24.4 Allocation of Resources. Whenever a Force Majeure Event or a Disaster causes Service Provider to allocate limited resources between or among Service Provider's customers, Service Provider will treat Customer (and restoration of Services to Customer) as well or better than every other Service Provider customer. In addition, in no event will Service Provider re-deploy or reassign any Key Service Provider Personnel to another account in the event of a Force Majeure Event.

## 25. NOTICES

25.1 General. Any notice or other communication which either Party hereto is required or authorized by this Agreement to give or make to the other will be delivered by both overnight mail or courier with signed delivery confirmation and via electronic mail. The business day after the workday that the e-mail was sent shall control the date notice was deemed given except if such business day after the workday is a holiday(s) recognized by the recipient, then the first business following the recipient's holiday(s) shall be the date notice is deemed given. An e-mail transmitted after 1:00 p.m. shall be deemed to have been transmitted on the following business day. Delivery by overnight mail or courier shall be deemed to have been transmitted on the date of the signed delivery confirmation.

25.2 Addresses. For the purposes of Section 25.1 above, the address of each Party will be:

For Service Provider:

*For Service Provider:*

Mail to:  
Unisys Corporation  
801 Lakeview Drive, Suite 100  
Blue Bell, PA 19422  
Attn: Vice President US&C Public Sector Accounts

And email to:  
peter.tucker@unisys.com  
ed.cichone@unisys.com

With a copy of all legal notices mailed to:  
801 Lakeview Drive, Suite 100  
Blue Bell, PA 19422  
Attn: General Counsel

And email to:  
notifications@unisys.com

*For Customer:*

Mail to:  
City of Santa Clara  
Attention: Information Technology Department  
1500 Warburton Avenue  
Santa Clara, California 95050

And email to:  
ITDepartment@santaclaraca.gov

With a copy of all legal notices mailed to:  
City of Santa Clara  
Attention: City Attorney's Office  
1500 Warburton Avenue  
Santa Clara, California 95050

And email to:  
CityAttorney@santaclaraca.gov, and  
Manager@santaclaraca.gov

Either Party may change its address for service by notice as provided in this Article.

**26. NON-SOLICITATION**

26.1 General. During the Term and for the period of six (6) months after the expiration or termination of the Agreement (and any Termination Assistance or extension of Services under Sections 14.7 and 14.9), neither Party will, without the prior written consent of the other Party directly or through a third party, intentionally solicit or entice away (or seek or attempt to entice away) from the employment of the other Party's employees. This Article 26.1 will not apply to unsolicited responses by employees to general recruitment advertising.

**27. RELATIONSHIP**

27.1 Independent Parties. Service Provider and Customer are independent entities. Neither this Agreement will constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership relationship, employer/employee or formal business organization of any kind and neither Service Provider nor Customer will have the right to bind the other without the other's express prior written consent.

27.2 Third Party Agreements. Unless otherwise agreed, Service Provider will provide that all Third Party Agreements that are to be assigned or transferred to Customer pursuant to Article 14, will be freely assignable to Customer without any modification or consent, subject only to Customer agreeing to assume Service Provider's obligations thereunder from and after the effective date of the assignment.

**28. SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be separable from the remainder of the provisions hereof which will continue in full force and effect as if this Agreement had been executed with the invalid provisions eliminated.

**29. WAIVER**

The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder or thereunder, will not constitute a waiver thereof and will not cause a diminution of the obligations established by this Agreement. A waiver of any default will not constitute a waiver of any subsequent default. No waiver of any of the provisions of this Agreement will be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

**30. PUBLICITY**

30.1 Customer Publicity. Customer may in its discretion make any press announcements or publicize this Agreement or any matters relating to any of the transactions contemplated hereby.

30.2 Service Provider Publicity. Except with the written consent of Customer, Service Provider will not make any press announcements or publicize this Agreement or any matters relating to any of the transactions contemplated hereby or use any Customer name or trademark in any way whatsoever except for any information which is already in the public domain or otherwise non-confidential.

**31. GOVERNING LAW**

31.1 General. This Agreement will be governed by and construed in accordance with the laws of the State of California and applicable U.S. federal laws, without giving effect to its principles of conflict of laws.

31.2 [RESERVED].

31.3 UN Convention. The 1980 United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

31.4 Binding Nature. This Agreement is binding on Service Provider and Customer and their respective successors and permitted assignees.

**32. ASSIGNMENT AND DIVESTITURE**

32.1 Assignment. Service Provider may not assign this Agreement without the prior written consent of Customer. Any such assignment will be void. Customer may assign or transfer this Agreement, upon notice to Service Provider, to a related party or unrelated party pursuant to a sale, merger or other business reorganization of Customer or any of its operating units.

32.2 [RESERVED].

**33. GOOD FAITH**

Whenever this Agreement requires or contemplates any action, consent or approval, each Party will act reasonably and in good faith and will not unreasonably withhold or delay such action, consent or approval, unless the Agreement expressly establishes some other standard, such as exercise of a Party's sole discretion.

**34. FURTHER ASSURANCES**

Each party will provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

**35. NO THIRD PARTY BENEFICIARIES**

Nothing in this Agreement, express or implied, is intended to confer rights, benefits, remedies, obligations or liabilities on any person (such as any employees of the Parties) other than the Parties or their respective successors or permitted assigns.

**36. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, and may be executed by electronic signature, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

**37. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior communications and agreements between the Parties relating to its subject matter.

(document continues on next page)

Master Service Agreement

IN WITNESS, WHEREOF, this Agreement is hereby executed by the duly authorized representatives of the Parties, as set forth below.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA  
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

\_\_\_\_\_  
GLEN R. GOOGINS  
City Attorney

\_\_\_\_\_  
JOVAN D. GROGAN  
City Manager

"City"

**UNISYS CORPORATION**  
a Delaware corporation

Dated: \_\_\_\_\_

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

Name: Ed Cichone

Title: Vice President, Client Management

Local Address: 801 Lakeview Drive, Suite 100

Blue Bell, Pennsylvania 19422

Email Address: ed.cichone@unisys.com

Telephone: 908-878-9426

"CONTRACTOR"