AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
DLT SOLUTIONS, LLC

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and DLT Solutions, LLC., a Virginia limited liability company (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A.   City desires to secure the services ("Services") more fully described in this Agreement, in Exhibit A, entitled "Scope of Services";

B.   Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required Services and goods of the quality and type which meet objectives and requirements of City; and,

C.   The Parties have specified herein the terms and conditions under which such Services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1.   AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

Exhibit D – AutoDesk License Agreement

Exhibit E – Rand Worldwide Service Level Agreement

Exhibit F – Sample Work Authorization

corrections or replace Services or materials and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is four hundred thousand dollars ($400,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services including any taxes. All Services performed or supplies, materials and equipment provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.

B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.

C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the Term and for four (4) years from the date of final payment for Services or goods provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, and employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its

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 Contractor has read and agrees to comply with City's Ethical Standards (http://santaclaraca.gov/home/showdocument?id=58299).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to Services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties.

EXHIBIT A
SCOPE OF SERVICES

1.8 The term "Core Project Team" consists of both the "Project Team" and the "Customer Project Team".

1.9 The term Project Team Lead means the person designated, by Contractor or SVP, to be the point of contact to communicate tasks and receive feedback.

SECTION 2. SYSTEM AND SOFTWARE REQUIREMENTS

2.1 Licensed Software

Contractor shall provide the following third-party software ("Licensed Software") required for the DMS:

Table 1: Licensed Software

Software	Modules
Autodesk	Vault Professional (3-year subscription)
Imaginit	Vault Server Utilities (3-year subscription)
	Vault Client Utilities (3-year subscription)
Microsoft	SQL

2.2 License Software Scope Assumptions and SVP Obligations

2.2.1 Any licenses required for Autodesk Vault Professional products will be covered by the Autodesk License Agreement (Exhibit D), which is attached hereto and incorporated as though fully set forth herein. All Licensed Software is subject to the terms of the AutoDesk License Agreement, and nothing herein shall serve to modify such terms or expand the scope of the license granted thereunder.

2.2.2 Logging incidents with IMAGINiT Support (ProductivityNOW), after Project end, as well as the application of fixes or patches that are made available by IMAGINiT Support or other Software Vendor, are the responsibility of SVP. Annual support services through ProductivityNOW will be covered by the Rand Worldwide Service Level Agreement (Exhibit E), which is attached hereto and incorporated as though fully set forth herein.

2.3 Business Process Scope

The scope of this Project is based on an Autodesk Vault Professional (Vault) implementation and content delivered by Contractor. Any deviations will be addressed via the Project Change Control Process, described in Section 9. Contractor may recommend SVP replace existing business processes with an alternative process to improve optimization and efficiency. SVP's acceptance or rejection of such recommendations shall not modify the scope of this Agreement unless authorized through the process in Section 9.

2.4.14 File/data loading workshop.

2.4.15 Install Microsoft SQL Server Standard/Enterprise.

2.4.16 SSL (Secure Socket Layer) configuration 1 / high-level or government security requirements.

2.4.17 Bill of Materials management and configuration (requires Items-based configuration).

SECTION 3. PROJECT IMPLEMENTATION, DATA CONVERSION, TRAINING AND DOCUMENTATION

3.1 Organizational Change Management Scope

3.1.1 "Organizational Change Management (OCM)" means the efforts related to managing the organizational and people aspects from changes in organizational structures, processes, systems, culture, or changes from an existing state to a future state. Contractor will provide the level of effort related to the scope and a senior consultant with responsibility for key strategy/approach work products and activities. Activities may include:

3.1.1.1 Organizational Readiness & Risk Assessment - This work product will identify key organizational risks and challenges associated with the Project. The assessment also provides critical success factors and mitigation plans.

3.1.1.2 Change Management Strategy and Roadmap (Change Management Strategy) – This work product documents the change management strategy and the corresponding program and roadmap for the Project. It integrates the findings from the Change Readiness Risk Assessment into an overall change management program and roadmap. The Change Management Strategy will also outline risk mitigations for organizational issues and provide a recommended change management program.

3.1.1.3 Change Management Project Plan – This work product outlines the Project work plan including phases, stages, and tasks mapped to responsible resources.

3.1.1.4 Communications Plan & Cadence – This work product documents the communications plan and activities to support the initial communication needs of the Project. The primary focus will be on the Project Teams, and general awareness activities to the broad audience.

3.1.1.5 Executive Alignment Workshops – The purpose of Executive Alignment Workshops is to provide a vision and roadmap for the Project, share and discuss organizational challenges with this transformation, and

3.2.1.1.3 Vault and working folder structure definition.

3.2.1.1.4 Administrative and global options.

3.2.1.1.5 Advanced Autodesk Data Management Server (ADMS) setting options.

3.2.1.1.6 Visualization management options.

3.2.1.1.7 Category definitions and rules.

3.2.1.1.8 Lifecycle and revision schemes.

3.2.1.1.9 Property mapping including but not limited to iProperties, attributes, file properties, user defined properties (UDP's).

3.2.1.1.10 Automatic file naming schemes.

3.2.1.1.11 Engineering change order routings.

3.2.1.1.12 Collaboration settings.

3.2.1.1.13 Custom objects and labels.

3.2.1.1.14 Thin client configuration.

3.2.1.1.15 Backup strategy & SQL server maintenance plan.

3.2.1.1.16 Inventory Project file configuration requirements.

3.2.1.2 Contractor Specific Tasks. Contractor shall be responsible for:

3.2.1.2.1 Reviewing the final hardware and software requirements.

3.2.1.2.2 Reviewing and defining configuration options.

3.2.1.2.3 Reviewing training requirements and setup.

3.2.1.2.4 Refining the plan and schedule, as necessary.

3.2.1.3 SVP Specific Tasks. SVP shall be responsible for:

3.2.1.3.1 Organizing internal resources needed for the meetings.

3.2.1.3.2 Supplying sample CAD (Computer Aided Design) files and drawings

3.2.1.3.3 Managing revision control / change process documentation, templates, etc.

3.2.1.4 Required Resources

3.2.2.3.1 Prepare Vault server(s), including but not limited to: operating system (OS), Internet information services (IIS) & standard practices (SP's), network connectivity, configuration, and security) according to Vault requirements.

3.2.2.3.2 Supply local administrator access to all required servers/workstations.

3.2.2.3.3 Create Vault services account(s).

3.2.2.3.4 Allocate time for implementation of Vault server(s) software and components.

3.2.2.3.5 Organize internal resources needed for "pilot" setup.

3.2.2.4 Required Resources

3.2.2.4.1 Contractor Technical Consultant (IMAGINiT).

3.2.2.4.2 SVP Project Team / Project Team lead, CAD and IT representatives, and other SMEs as may be required.

3.2.2.5 Deliverables

3.2.2.5.1 Installation and configuration of Vault "pilot" server(s) environment.

3.2.2.5.2 Updated Vault environment configuration document.

3.2.3 Pilot User Acceptance Testing Preparation

3.2.3.1 Contractor and SVP shall work together for Vault Pilot User Acceptance Testing (UAT).

3.2.3.2 Contractor shall be responsible for the following:

3.2.3.2.1 Prepare a written UAT plan (per Section 4.3) (Test Plan) that clearly documents the requirements and steps for Customer to follow.

3.2.3.2.2 Review UAT Test Plan with Customer.

3.2.3.2.3 Prepare UAT sample data import.

3.2.3.2.4 Install UAT workstation, including (a) deployment of CAD and Vault Clients; (b) deployment of CAD project files & template files; and (c) UAT Vault training (basic user training per UAT requirements).

3.2.4.4.1   Vault UAT pilot testing period support.

3.2.4.4.2   Vault reconfiguration recommendations document (from UAT results).

3.3 Production Implementation Phase Tasks

3.3.1   Production Rollout

This phase includes installation of the components necessary to build out the production Vault server environment based on prior task requirements, planning and results.

3.3.1.1   Contractor shall be responsible for the following:

3.3.1.1.1   Production server components software: MS IIS, MS SQL server, and other components as required.

3.3.1.1.2   Install and configure production job processor server software.

3.3.1.1.3   Setup and install production workstation client software.

3.3.1.1.4   Setup and configure production server backup.

3.3.1.1.5   Configure production server environment.

3.3.1.1.6   Aid in the update of CAD design data, templates, and project files.

3.3.1.2   SVP shall be responsible for organizing internal resources if needed for further discussions.

3.3.1.3   Deliverables

3.3.1.3.1   Installation and configuration of Vault to production server.

3.3.1.3.2   Installation of Vault Client software to production workstations.

3.3.1.3.3   Deploy CAD design data, templates, project files to production workstations.

3.3.2   **Data Loading and Mastering.** This phase includes examining, checking-in and properly mastering approximately 7,000 substation drawings and 1,000 generation-related AutoCAD drawings.

3.3.2.1   Contractor shall be responsible for the following:

delivery format. Contractor will lead this effort with contribution from SVP.

    3.4.1.1.3 Training Material Standards, Prototypes, and Templates - These work products detail the overall courseware standards for the training effort and includes details on the development process, e.g., storage, file naming, development process and sign-off, etc. Contractor will lead this effort.

3.4.2 End User Training Assumptions and Customer Obligations

3.4.2.1 Contractor's training lead will work with SVP training lead.

3.4.2.2 SVP is responsible for coordination of training, including enrolling and scheduling trainees and trainers and obtaining and preparing training facilities.

3.4.2.3 Exclusions:

    3.4.2.3.1 Training Help Desk support and post-implementation support (training course maintenance) is not part of the implementation training. If SVP subscribes to annual ProductivityNow Support Services, post-implementation support and training service will be provided as part of those services.

    3.4.2.3.2 Contractor assumes that all users will be PC literate prior to training delivery. Basic PC training is not included in this effort.

3.4.2.4 SVP will be responsible for providing and supporting a training environment to be used in the development of training materials and to deliver end-user training. During training delivery this environment will be used to support demonstrations and exercises. SVP will be responsible for providing an environment that contains base data to support demonstrations and exercises.

3.4.3 **Vault Professional Training.** Rollout of the Vault production environment, deployment of remaining clients, and Vault training to SVP's engineering/design team members and administrators based upon the core features and functionality of Vault and SVP's specific workflow configuration.

3.4.3.1 Contractor shall be responsible for the following:

    3.4.3.1.1 Assist with deployment of Vault Clients to remaining users.

    3.4.3.1.2 Supply Vault training Manuals.

systems into current Contractor systems), whether by manual or programmatic methods. The Data Migration and Conversion tasks identified below are within the Project scope.

3.6.2 Contractor will hold a data migration and conversion task for the applications in scope including data related to approximately 8,000 files of AutoCAD DWG Data. Data Migration and Conversion Assumptions and SVP Obligations

3.6.2.1 SVP will be responsible for data import, normalization and full data migration.

3.6.2.2 If issues are found with the current state of the CAD data that need to be corrected, Contractor shall supply migration assistance as an optional service at an additional cost. If approved by City, such additional cost shall be authorized pursuant to the provisions of Section 9. '

3.6.2.3 SVP is responsible for all conversion activities, other than those identified as Contractor responsibilities herein. This includes but is not limited to the following:

3.6.2.3.1 Extracting and cleansing legacy data and transforming/mapping into prescribed formats provided by Contractor.

3.6.2.3.2 Designing and building any conversion programs that may be required.

3.6.2.3.3 Reconciling and validating converted data and correcting and reloading data with errors.

3.6.2.3.4 Where the conversion method is manual, SVP is responsible for performing the data preparation and data entry.

3.6.2.4 Data Conversion Roles and Responsibilities:

3.6.2.4.1 Test Load Sample data: Sample tests will be performed to help ensure the end-to-end process is working.

- Lead: Contractor

- Assist: Customer

- Key Assumptions: Contractor will provide guidance for sample data testing. Contractor will provide data mapping guidance; Contractor will assist with issue resolution as necessary.

4.2.2.5 Determine Project priorities and approve all changes to Project scope.

4.2.2.6 Provide final review and approval of Project deliverables and milestones.

4.2.2.7 Monitor Project quality and integrity with respect to business goals.

4.2.2.8 Provide positive leadership and ongoing support to Core Project team members.

4.2.2.9 Identify and communicate any issues of concern throughout the Project.

4.2.2.10 Participate in Project meetings.

4.2.2.11 Be available to the Project to resolve issues that the Project management team cannot resolve promptly.

4.2.3 **Weekly Status Reports and Meetings:** Contractor shall provide a weekly Project status report and conduct weekly one-hour status meetings. Additional meetings will occur as mutually agreed between the Contractor Project Manager, SVP Project Manager, and key Project participants. The status report and associated meeting will focus on overall Project status and deliverables, issues/at risk items, key decisions, Project plan review/updates, escalations, and overall Project status as compared to plan.

4.2.4 **Project Issue Escalations**: From time to time, issues that are negatively impacting Project progress will arise that require urgent SVP attention. The Contractor Project Manager will act as the point of escalation for urgent issues that require the attention of SVP. When Project items are escalated, SVP shall:

4.2.4.1 Respond within two (2) business days where Project progress is being negatively impacted but is not halted.

4.2.4.2 Respond within one (1) business day where Project progress is blocked.

4.2.5 **Project Change Control Process.** Project changes such as, but not limited to, changes in costs, timing, scope, or deliverables will be managed in accordance with Section 9, Additional Services/Licenses. Change Control Process will be invoked before any unplanned or out of scope work is executed or any work is completed outside the Customer's regular business hours. Any additional effort/costs because of such work would be subject to the process in Section 9.

4.4.5 Upon completion of each Project deliverable set forth above, Contractor shall provide the deliverable to the Customer. Customer has five (5) business days after submission of the deliverable or completion of the activity ("Acceptance Period") to give Contractor written notice specifying any deficiencies of such deliverable or activity against the description for such deliverable or activity specified in this Agreement in detail. If provided with such notice, Contractor shall make reasonable efforts to promptly cure any such deficiencies. After completing such a cure, Contractor shall resubmit the deliverable or perform the activity for Customer review as set forth above (with a new five (5) day Acceptance Period beginning on the date that such resubmittal was received by Customer. Customer's acceptance shall be in writing; however, if Customer fails to provide written notice of any deficiencies (or written acceptance) within an Acceptance Period, as provided above, such deliverable or activity shall be deemed conclusively accepted at the end of the Acceptance Period.

SECTION 5.   POST IMPLEMENTATION TRAINING AND SUPPORT SERVICES

5.1 Post implementation training and support services will be available through an optional annual subscription to IMAGINiT ProductivityNOW Professional Support and eLearning. Services include, but not limited to:

5.1.1 Knowledge Capture & Sharing Portal with Priority Support including, but not limited to:

5.1.1.1 Unlimited access to the entire library of Autodesk related eLearning courses, how-to videos, and other productivity content.

5.1.1.2 Ability for managers to capture and publish company specific content, manage user accounts and access learning reports.

5.1.1.3 Priority access to technical support via telephone, online chat, and email, including electronic screen sharing.

5.1.1.4 Five (5) hours (per contract year) of design assistance including scheduled 1-on-1 time with an expert for 'How-To' and/or Project related assistance.

5.1.2 Contractor will assign a ProductivityNOW Success Manager to assist with the implementation, administration, and ongoing user communications to drive user awareness of the ProductivityNOW benefits available to SVP.

	SVP			CONTRACTOR			
Task	PM	IT	SME	AM	PM	PMO	SME
1. Define, Develop, Implement and Monitor Project Governance.	A	I	I	C	R	C	I
2. Develop Project Report as a Part of Project Governance Process	R	C	I	I	C	C	C
3. Escalate Project Related Matters Needing Attention	R	C	C	A	R	C	C
4. Perform Project Management Functions/Implement Project Governance	R	C	C	A	R	C	C
5. Act as Primary Point of Contact for Program Communication	R	C	C	A	R	C	C
6. Manage Program Resources, Resolve Personnel Issues, Fix Problems	A	C	C	I	A	R	C
7. Manage Scope (as a part of Project Governance)	R	N/A	N/A	A	R	C	N/A
8. Manage Senior Management Communication	R	N/A	N/A	A	R	C	N/A
9. Provide High Level Guidance to the Teams	R	N/A	N/A	A	R	C	N/A
10. Define, Manage, Maintain, Report and Enforce Quality	A	C	C	I	A	R	C
11. Meet per Project plan to Review Project Status	A	C	C	I	A	R	C
12. Define, Design, Perform and Verify OCM	R	C	C	C	C	C	C
13. Make Decisions on Project Issues	R	C	C	C	C	C	C
14. Identify, Discuss, Review, Verify and Implement Deliverable Acceptance Criteria	C	I	I	A	R	I	I
15. Facilitate workshops or pilots to ensure business requirements are met.	C	I	C	A	R	C	C
16. Provide Licensed Software Knowledge and expertise during the Project's lifecycle.	I	I	I	I	A	C	R

7.3 Resource Assumptions and Customer Obligations

7.3.1 SVP acknowledges that all Project timelines are subject to timely provision of resources and performance of obligations.

7.3.2 SVP will provide, at no charge to Contractor, personnel to carry out administrative functions on behalf of the Contractor Project team. SVP may, at its discretion, choose to assign multiple people to cover the required tasks.

7.3.3 The Core Project Team, including Contractor and SVP team members, will be co-located at SVP's office, located at 881 Martin Avenue, Santa Clara, California, 95050, for all onsite Project work.

7.3.4 Customer Core Team Members: SVP will assign experienced representatives from all the areas within scope for the duration of the Project, to ensure all activities are completed within the established timeline. These individuals will be qualified to define requirements for their respective disciplines and will be empowered to make decisions, including deliverable signoffs, and will engage other subject matter experts as needed.

7.3.5 Customer subject matter experts (SMEs): In addition to SVP core team members, SVP's SMEs will be required from affected areas of the business to participate in business process requirements reviews and design workshops. SVP will ensure these resources are identified in advance and are readily available to participate in meetings workshops and test events as defined in the Project work plan to keep the Project on schedule.

7.3.6 SVP will have full time technical resources assigned to the Project, while the Contractor technical resource will serve as an advisor for all technical activities in this Project. This should allow the Contractor to transfer knowledge and ownership of technical tasks to the SVP technical team, which should result in decreased Contractor involvement over time.

7.3.7 Contractor staffing requirements will be determined solely by Contractor but shall be sufficient to complete the scope of services, trained and experienced in the functions they are to perform and are subject to the provisions of Section 1.5.

SECTION 8.　OTHER ASSUMPTIONS AND OBLIGATIONS

8.1 If not referenced elsewhere in this Agreement, the following assumptions and obligations shall apply:

8.1.1 Any additional requirement(s) not specified in this Scope of Services that are identified during the Project will be addressed using the Project Change Control Process

such as though the Project Change Control Process, Contractor may submit a proposal without a Work Request.

9.2 Contractor shall prepare and submit a Proposal (Proposal) for each Work Request that includes:

9.2.1 A work plan that includes a detailed description of the licenses required and/or services to be performed.

9.2.2 A project timeline/schedule with discussion on any activities that may impact the project timeline/schedule.

9.2.3 Any required documents.

9.2.4 A list of City responsibilities.

9.2.5 A final acceptance criteria.

9.2.6 An itemized cost proposal showing:

9.2.6.1 Hours and hourly rates by position for both Contractor and subcontractor personnel if applicable.

9.2.6.2 Itemized license cost and quantity.

9.2.6.3 Reimbursable expenses, in accordance with the limitations set forth in Exhibit B.

9.2.6.4 Any additional costs including, but not limited to freight, permits, or fees.

9.2.6.5 Breakdown of materials and labor sufficient to calculate required taxes.

9.2.6.6 Estimated total cost including any required taxes.

9.2.6.7 All submitted pricing shall be in accordance with the rates authorized in Exhibit B of this Agreement and the Proposal shall include sufficient information for the City to determine that rates are in accordance with the Agreement.

9.2.7 Cost for any additional equipment, parts, or services required for completion of services as detailed in the Work Request and in Contractor's Proposal but not reflected in the Contractor's cost proposal shall be the sole responsibility of the Contractor and at no cost to the City.

9.2.8 The City will review the Proposal, and may elect to approve it, reject it, or use it as a basis for further negotiations with Contractor.

9.3.5 Only the Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer may, on behalf of the City, execute a Work Authorization.

9.3.6 Changes to Work Authorization:

9.3.6.1 Contractor shall notify the City immediately when a situation occurs that may result in a change to the total project cost or specific line items in a Work Authorization or Purchase Order. Contractor shall provide the reason for the change specific to each Work Authorization or Purchase Order.

9.3.6.2 If Contractor requires changes to a fixed price Work Authorization, Contractor shall only be permitted to request changes with justification such as additional scope requested by City or unanticipated conditions. For such changes, Contractor shall submit justification demonstrating that changes in cost are associated with changes in scope. Contractor shall not be entitled to additional compensation for issues such as errors in calculation of original pricing, changes in staff, or other changes that are not directly related to changes requested by City.

9.3.6.3 In the event that unanticipated site conditions or other issues result in costs that exceed the total of the Work Authorization or Purchase Order or changes to line items in a Purchase Order, Contractor shall submit to the City an updated Proposal for review and approval from the City in advance of performing any additional services. The City will issue a new or amended Work Authorization (if required pursuant to Section 9.3.2) or Purchase Order (as applicable) to authorize such additional services.

9.4 A Work Authorization must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in a Work Authorization or Proposal – even if the Work Authorization or Proposal expressly states that it is intended to control. Any conflicting terms and conditions in a Work Authorization or Proposal are invalid and unenforceable.

9.5 Each Work Authorization and Purchase Order shall be incorporated into the Agreement by reference and subject to its terms and conditions and the Services contained therein shall be included within the Services.

9.6 If Contractor begins services or fails to dispute a Purchase Order within three (3) business days, Contractor is assumed to have accepted the terms of the Purchase Order.

9.7 The City, through the individuals listed in Section 9.3.5 may terminate a Work Authorization or Purchase Order for convenience with ten (10) days prior written notice to Contractor. In such event, the Contractor shall have no further rights

office or job site. Under no circumstances will the usage of e-Builder be grounds for a time extension or cost adjustment to the Agreement.

10.6   Data entered in a collaborative mode (entered with the intent to share as determined by permissions and workflows within the e-Builder system) by the City and the Contractor will be jointly owned.

10.7   Contractor is responsible for managing, tracking, and documenting the Services to comply with the requirements of this Agreement. The City's acceptance via automated system notifications or audit logs extends only to the face value of the submitted documentation and does not constitute a validation of the Contractor's submitted information.

10.8   At the City's sole discretion, project documents may be processed and distributed digitally over the internet or may be required to be presented in hard copy format.

10.9   While regular email may still be used for communication, when requested by the City, e-Builder shall be utilized as much as possible in connection with all document and information management required in the performance of projects where City has directed the use of e-Builder. Contractor shall be responsible for scanning or otherwise converting to electronic format all project submittals and Contractor correspondence, drawings, sketches, etc., and uploading them to the e-Builder website and shall be responsible for the validity of the information placed in e-Builder. The Contractor shall utilize the existing forms and processes in e-Builder to the maximum extent possible. If a required form does not exist in e-Builder, the Contractor shall include a form of its own or one provided by the City (if available) as an attachment to a submittal or process. Documents and information to be submitted electronically include, but are not limited to:

10.9.1 Correspondence.

10.9.2 Meeting minutes.

10.9.3 Product data, reports, certifications, etc. must be submitted in PDF. (If a sample can be scanned, it is requested that a scanned PDF copy be submitted with the sample.

10.9.4 Requests for Information (RFI's).

10.9.5 Submittals and shop drawings.

10.9.6 Change order requests and documentation, including record copies of change orders, proposals, and modifications.

10.9.7 Pay applications.

EXHIBIT B
SCHEDULE OF FEES AND PAYMENT PROVISIONS

SECTION 1.   MAXIMUM COMPENSATION

1.1 The maximum compensation payable to Contractor during the Term shall not exceed the amount in Section 6 of this Agreement.

SECTION 2.   ONE-TIME SYSTEM IMPLEMENTATION FEES

2.1 All the cost of implementing Autodesk Vault as outlined is Exhibit A shall be paid on a fixed fee basis at completion of services. The breakdown is provided in Table B1 below.

Table B1 – One-Time Implementation Cost Breakdown

Fixed Fee Billing ID	Fixed Fee*
Project Management	$6,666.67
Autodesk Vault Professional Implementation as defined in Section 2.4 and Section 3.1 – 3.3	$18,888.89
Autodesk Vault Professional Implementation (Training) as defined in Section 3.4	$10,000.00
Imaginit Design Assistance Support 8 Hours ($261.11/hour)	$2,088.88
Customer AutoDesk Vault Professional: Essentials Training Class 1 Custom Training Course for 45 Students over five (5) days	$12,500.00
Total	$50,144.44

2.2 Sales tax are not applicable to the services or subscription. To the extent that sales or use tax is applicable, Contractor is responsible for invoicing such sales tax and remitting pursuant to applicable law.

2.3 Travel and associated expenses are not included in the rates or estimated fees stated herein and are in addition to such fees. Expenses for travel shall be invoiced in accordance with Exhibit B, Section 3.2(5).

SECTION 3.   ONGOING SOFTWARE LICENSE, MAINTENANCE, AND SUPPORT FEES

3.1 Table B2 sets forth the fees for the initial three years of the Agreement. Increases to the fees are subject to Section 3.1 below.

Table B2: Ongoing Software License, Maintenance, and Support Fees

3.3.1 Except for ProductivityNOW, Contractor may request to increase labor rates up to 4% annually subject to Section 3.3.3. After the first twelve months of ProductivityNOW, rates may be negotiated annually.

3.3.2 After the initial three years of the Agreement, rates for Vault Professional License Subscriptions and Vault Server and Client Utilities may be negotiated no more than once annually.

3.3.3 Contractor shall notify the City ninety (90) days in advance of any proposed rate increase. Any rate increases are subject to approval by the City and must be substantiated by the Contractor to the satisfaction of the City. Except as specified in Section 3.1.1, All rate adjustments must be approved by the City through an amendment to this Agreement. References to alternate rates in quotes that have not been separately authorized pursuant to this section are not approved.

3.4 Reimbursable Expenses: Contractor may pass through costs such as printing, materials, equipment, etc. in Reimbursable Expenses Schedule in this Section. Expenses shall be reimbursable only to the extent that (1) Contractor submits sufficient documentation to City that the expenses were directly incurred in providing the required Services, (2) Contractor demonstrates that such expenses aren't included in the hourly rate where applicable, (3) such expenses were approved in advance, (4) Contractor submits receipts, invoices, or other supporting documentation demonstrating that such reimbursable costs were incurred.

	Reimbursable Expense Schedule	Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Other reimbursable expenses with prior written approval from the City	No Markup
4.	Allowable mileage will be charged at the prevailing IRS rate per mile. Mileage is not applicable to rental cars. Rental cars are reimbursed at actual cost only.	No Markup
5.	Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related per diem shall not exceed the rates outlined by United States General Services Administration (GSA). https://www.gsa.gov/travel-resources. Airfare or rental car, where applicable shall be at economy rates.	No Markup

SECTION 4.   PAYMENT PROVISION

4.1 Contractor shall email all invoices to SVP_AP@santaclaraca.gov.

EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A.   COMMERCIAL GENERAL LIABILITY INSURANCE

  1.   Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

  $1,000,000 Each Occurrence
  $2,000,000 General Aggregate
  $2,000,000 Products/Completed Operations Aggregate
  $1,000,000 Personal Injury

  2.   The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

  a.   Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

  b.   There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and

  c.   Coverage shall apply separately to each insured against whom a claim is made, or a suit is brought, except with respect to the limits of liability.

B.   BUSINESS AUTOMOBILE LIABILITY INSURANCE

  Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C.   WORKERS' COMPENSATION

  1.   Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each

2. <u>Primary and non-contributing</u>. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. <u>Cancellation</u>.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. <u>Other Endorsements</u>. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

G. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, <u>except as with respect to limits</u>. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the Services will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the Services reserves the right to charge

be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives

capitalized terms are defined in these Terms, including in Section 18 (Definitions) below.

2.   **Special Terms**

Some Offerings may be subject to special terms set forth in the Special Terms (https://www.autodesk.com/company/terms-of-use/en/special-terms) or in the Documentation for the Offerings ("Special Terms").

You agree to the Special Terms, if any, for an Offering that You subscribe to, access, or use.

3.   **Return For Refund**

For a limited period, if You (a) object to any of these Terms, (b) object to any Autodesk terms of purchase or auto-renewal applicable to the purchase or renewal, or (c) are dissatisfied (for any reason) with the Offering to which You subscribed, You may return the Offering and may qualify for a refund under the Autodesk Return Policy (https://www.autodesk.com/customer/help?guid=GUID-0D758126-DBBC-4489-8DBF-924977E9DC94#refund-policy).

4.   **Your Account**

You are responsible for anyone who obtains, accesses, or uses Offerings through You or Your account (including Your Authorized Users) and their compliance with these Terms as though each of them is You. In certain cases, Your Authorized Users may be required to set up individual accounts or agree to applicable terms in order to obtain, access, or use Offerings, but You remain responsible. You also agree to secure and not share user IDs or passwords (except with authorized account administrators). If You suspect unauthorized use of Your account, please contact https://www.autodesk.com/trust/contact-us (https://www.autodesk.com/trust/contact-us).

5.   **Your Own Work**

You will retain Your ownership rights to files, designs, models, data sets, images, documents or similar material created by You (or Your Authorized Users) and submitted or uploaded to an Offering by You (or Your Authorized Users).

6.   **Privacy**

Autodesk is committed to protecting Your privacy and letting You know what Autodesk will do with Your personal data. Autodesk's Privacy Statement (https://www.autodesk.com/company/legal-notices-trademarks/privacy-statement) sets forth how Autodesk may collect, use, store and process

solely for Your backup and archival purposes for the duration of the Offering Term.

8.2 Access to Software and Cloud Services

Subject to compliance with these Terms, Autodesk will, during the Offering Term, make Offerings available to You through Your account or other electronic means. Autodesk will not be liable for any losses or other liability incurred by You or others due to sending Your account information to an incorrect address. You may be required to log into Your account or provide Autodesk additional information to activate, access, or use an Offering. Some Offerings may cause Your computers or other devices to automatically connect to the internet (intermittently or on a regular basis)— for example, to validate the proper use of Your subscription, provide You with access to services (including third-party services), or download and install Updates or Upgrades, all without further notice to You. You and Your Authorized Users agree to such connection and to validation of Your subscription and to the automatic downloading and installation of Updates and Upgrades. You may not be able to adjust Your Update or Upgrade settings for certain Offerings, including those for which automatic Updates or Upgrades are required for operation or security of the Offering.

During the Offering Term, Autodesk may make available or deliver Updates or Upgrades to Software. You will promptly install any mandatory Updates.

8.3 AutoDesk APIs

In connection with an Offering, you may have access to standard application programming interfaces, software development kits, tools, libraries, scripts, sample source code and similar developer material (collectively, "APIs"). Unless otherwise specified in the applicable Special Terms (including Documentation), You may use the APIs only (a) for the Offering for which you have a subscription and for which the APIs are provided, (b) during the Offering Term, (c) in accordance with the Special Terms (including Documentation) specific to the APIs, and (d) to develop applications, services, modules, or components solely for Your internal business use.

8.4 Use of Third Party Material and Services

Autodesk may provide You with content, designs, models, data sets, project information, documents, libraries, audio, links, data, applications and other software, services, or other material of a third party (collectively, "Third-Party Material/Services") in connection with Offerings. Any Third-Party Material/Services may be governed by different terms found in or with such Third-Party Material/Services (for example, in the "About Box," a .txt file, or accompanying license terms), on a registration page of a third party, or in the Special Terms (including Documentation) for the Offering for which the

others may be able to use, sell, reproduce, modify, distribute, make available, display, transmit and communicate Your Content, and suspending or terminating access will not delete or inhibit access to any of Your Content that was earlier shared or published. If You do not want others to have any such access or any of those rights, do not use the sharing, publishing, or other collaboration features of the Offerings and set Your permissions accordingly. Keep in mind that forums and galleries may be public, and submissions are generally public.

An Offering may feature links to Third-Party Material/Services. Such links are provided as a convenience to You. Autodesk does not monitor or control what such third parties will do with Your Content. You are responsible for ensuring the appropriate level of access to Your Content by any third party. If You authorize any of Your Content to be shared with any third party, Autodesk may make Your Content available to such third party; Autodesk will, however, have no responsibility or liability for the actions of such third party.

9. Trial Versions

Autodesk may make available or deliver Offerings (or features of an Offering) described as "not for resale," "free," "evaluation," "trial," "pre-release," "beta," or another similar designation (collectively, "Trial Versions"). Except as expressly set forth in the Documentation for the Trial Version or applicable Special Terms, (a) you may access or use the Trial Version only for a period of 30 days from download or receipt, (b) Your use will be limited to non-commercial evaluation purposes, (c) the use of a Trial Version will be only by You as an individual or, if You are an entity, by one named employee, and (d) the Trial Version may only be used within the Territory where You acquired the Offering.

Notwithstanding any other provisions in these Terms, (i) Autodesk makes no commitments with respect to Trial Versions, including any commitment to continue any Trial Version or to convert any Trial Version into an Offering; (ii) Autodesk constantly conducts research to improve our Offerings and makes no commitment that such research will be commercially released in an Offering; and (iii) Trial Versions may contain code that is not fully tested, including errors and faults that may cause total data loss or system failure. Subscriptions to Trial Versions do not include subscription Benefits, and Autodesk reserves the right, without any further notice, to end any Trial Versions at any time.

10. Feedback

If You provide Autodesk with ideas for improvement, suggestions, or other feedback (collectively, "Feedback"), You hereby grant to Autodesk a non-exclusive, transferable, irrevocable, worldwide, royalty-free license (with

11.3 Acceptable Use of Offering

You will access and use (and permit access to and use of) Offerings only in compliance with the Acceptable Use Policy (https://www.autodesk.com/company/terms-of-use/en/acceptable-use) and all applicable laws.

12. Confidentiality

You or Autodesk (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party") in connection with these Terms. The Receiving Party will use the same degree of care as to the Disclosing Party's Confidential Information that it uses to protect its own confidential information of like kind (but in no event less than reasonable care) and will (a) use the Confidential Information of the Disclosing Party only in connection with Offerings, and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to the Confidential Information of the Disclosing Party to those of its employees, consultants, contractors, service providers, professional advisors and other individuals who need such access for purposes related to Offerings and who are subject to confidentiality obligations with the Receiving Party no less stringent than those in these Terms. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so. The Receiving Party will give the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and take reasonable steps to limit such disclosure. Autodesk may also disclose Your Confidential Information to comply with any governmental or regulatory body request (including subpoenas or court orders), as part of a legal proceeding involving Autodesk, or at Your request. If disclosure is made at Your request, You may be responsible for the costs of compiling and providing access to Your Confidential Information.

13. Autodesk Proprietary Rights

You acknowledge and agree that Autodesk and its licensors and suppliers will have ownership of and all rights with respect to (a) the Offerings, Documentation, APIs, and other information or material made available to You by Autodesk, including any copies of the foregoing, (b) any materials or other information based on, derived from, or otherwise using any of the foregoing (including Metrics), and (c) all rights under trade secrets, copyrights, trademarks, patents, and any other intellectual property or proprietary rights relating to any of the foregoing. The structure and organization, the underlying algorithms and other internals, the protocols, data structures and other externals, and the source code of the Offerings and the APIs constitute proprietary and confidential information of Autodesk, and You will not disclose such information to third parties, or use such information for any purpose other than as required for ordinary-course

FAULTS," AND WITHOUT WARRANTY OR CONDITION OF ANY KIND AND (b) AUTODESK AND ITS LICENSORS AND SUPPLIERS MAKE, AND YOU RECEIVE, NO WARRANTIES, REPRESENTATIONS, CONDITIONS, OR COMMITMENTS OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO ANY OF THE OFFERINGS OR ANY OUTPUT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, OR QUIET ENJOYMENT, ANY WARRANTIES OR CONDITIONS IMPLIED BY STATUTE, OR ANY WARRANTIES OR CONDITIONS BASED ON A COURSE OF DEALING, USAGE OF TRADE OR INDUSTRY STANDARDS. Any statements by Autodesk or its third-party agents, representatives, or service providers about the Offerings (including any statements about their functionality or performance) or Output, or other communications with You (including any insights, recommendations, guidance, assessments, projections, estimates or opinions), that are not contained in these Terms (including any Additional Agreement or Special Terms) are for information purposes only and do not constitute a warranty, representation, condition, or other commitment. Without limiting the generality of the foregoing, Autodesk and its licensors and suppliers do not warrant or otherwise commit that (i) the Offerings or Output, or Your access thereto or use thereof, will be available, uninterrupted, timely, error-free, secure, accurate, reliable, or complete, (ii) the Offerings will meet any particular performance, availability or service-level criteria, (iii) Your Content will not be lost or damaged, or (iv) errors or defects will be corrected or any particular support requests will be resolved to meet Your needs or expectations. Also, for clarity, (1) any reference to "unlimited" access, use, storage, or otherwise with respect to an Offering is subject to the technical limitations of the Offering, and (2) some Offerings or functionality may not be available in all locations (including the Territory) or languages.

14.3 Limitations on Liability

NEITHER AUTODESK NOR ANY OF ITS LICENSORS OR SUPPLIERS WILL HAVE ANY LIABILITY (DIRECTLY OR INDIRECTLY) FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES; LOSS OF PROFITS OR REVENUE; BUSINESS INTERRUPTION OR LOSS OF USE; COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER; FAILURE OF, OR DEFECTS IN, THE OUTPUT; LOSS, CORRUPTION, OR DELETION OF (OR FAILURE TO DELETE) DATA OR YOUR CONTENT; OR DAMAGES RESULTING FROM FORCE MAJEURE. THE AGGREGATE LIABILITY OF AUTODESK AND ITS LICENSORS AND SUPPLIERS WITH RESPECT TO ANY OFFERING OR OUTPUT THEREOF WILL IN NO EVENT EXCEED THE GREATER OF (a) THE AMOUNT PAID OR PAYABLE BY YOU FOR THE OFFERING IN THE ONE-YEAR PERIOD

Autodesk, (ii) the IP Claim covers any method or process not fully embodied in the Covered Offering, (iii) there is available an Update or Upgrade that avoids the infringement alleged in the IP Claim, or (iv) You have been in breach of these Terms. If Autodesk receives information about an infringement claim related to any Offering, Autodesk may, in its discretion, (1) modify or replace the Offering, (2) obtain a license for Your continued use of the Offering, and/or (3) terminate Your subscription for the Offering and refund any prepaid fees covering the remainder of the Offering Term of the terminated subscription. This Section 15 states Autodesk's sole obligations and Your exclusive remedy for any infringement of any third-party intellectual property rights

16. Term, Termination, Suspension

These Terms become effective on the first date accepted in accordance with Section 1 (Acceptance) above and continue in effect indefinitely unless terminated in accordance with the provisions of these Terms, including this Section 16.

16.1 Your Right to Terminate

You may terminate Your subscriptions and these Terms if Autodesk is in material breach of these Terms and fails to cure such breach within 30 days after written notice of the breach.

16.2 Autodesk's Right to Terminate or Suspend a Subscription or Account

Autodesk may terminate (or disable or suspend Your access to and use of) any or all of Your subscriptions or other Offerings, or terminate these Terms and Your account, if (a) You have no current paid subscriptions; (b) You have failed to timely pay any amounts (including fees and taxes) owing to Autodesk; (c) You (including any of Your Authorized Users) are otherwise in material breach of these Terms and fail to cure such breach within 30 days after written notice of the breach; or (d) You become subject to bankruptcy or insolvency proceedings, become insolvent, make an arrangement with or affecting Your creditors (including an assignment for the benefit of creditor) or commence a process of liquidation. These Terms will automatically terminate without further notice or action by Autodesk if You go into liquidation. Autodesk may also immediately disable or suspend Your access to and use of Offerings and Your Content if Autodesk believes in good faith that Your (or Your Authorized Users') conduct or failure to act, or Your Content, may (i) pose a security risk, constitute illegal activity, or otherwise adversely impact Offerings, systems, or other users, (ii) constitute or enable tampering with, removing, disabling or otherwise limiting the effectiveness of any technical protections, or (iii) subject Autodesk, or its

17.1 Changes to the Offerings

Autodesk reserves the right from time to time to (a) modify, discontinue, or substitute an Offering (including any Benefits, features, functionality, or supporting services related to the Offering), or (b) add or modify license keys, authorizations or other means of controlling or measuring access to or use of the Offerings. Autodesk will endeavor to notify You of any major changes to an Offering in the applicable release notes or other Documentation for the Offering.

17.2 Changes to Terms

To the maximum extent permitted by applicable law, Autodesk reserves the right from time to time to (and You acknowledge that Autodesk may) modify these Terms. Autodesk will endeavor to notify You of any changes to these Terms ("Terms Modification Notice"), including by posting to this site. It is your responsibility to regularly check this site for updates, including Terms Modification Notices. Except as otherwise expressly set forth in these Terms, if any modification to the Terms has a material adverse effect on You and You do not agree to the modification, You may reject the modification by notifying Autodesk of the rejection within 30 days of the Terms Modification Notice. If You reject a modification under these circumstances, (a) Your access to and use of any Offerings affected by the modification will continue to be governed by the terms in effect immediately before the modification (except to the extent the modification was made for security, privacy, or legal compliance reasons, in which case the modification will be effective immediately) until the earlier of (i) the end of the applicable Offering Term, or (ii) 180 days after the Terms Modification Notice; and (b) Your rights to such Offerings, including any related subscription Benefits, will then terminate. In the event of such a termination by You, Autodesk (or the party from whom You purchased Your subscription) will refund the prorated portion of any prepaid fees applicable to the remaining Offering Term of Your subscription for the affected Offerings after the effective date of termination. In any event, if any subscription is renewed or extended, it will be under the then-current Terms. Notices by You or Autodesk will be provided as set forth below, except that You may also provide Your notice of rejection via email (within the 30-day period described above) to the following email address: Terms.Modification.Rejection@autodesk.com (mailto:Terms.Modification.Rejection@autodesk.com), or in any other manner specified in the Terms Modification Notice.

Notwithstanding the forgoing, if the Special Terms, Offering Types and Benefits, or other policies include different terms or procedures for modification thereof, modification may, at Autodesk's option, be handled as described therein.

			and (to the extent not inconsistent with such section) in accordance with the arbitration rules of ADR Services as in effect when the notice of arbitration is submitted. The seat of the arbitration will be San Francisco.
Mainland China, Hong Kong, and Macau	Autodesk, Inc., a Delaware corporation	Singapore	Arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the SIAC as in effect when the notice of arbitration is submitted. The seat of the arbitration will be Singapore.
Asia, Oceania, and the Asia-Pacific region, other than Mainland China, Hong Kong, and Macau	Autodesk, Inc., a Delaware corporation	Singapore	Courts of Singapore
Europe, the Middle East, and Africa	Autodesk Ireland Operations Unlimited Company, an Irish company	Ireland	Courts of Ireland
Worldwide (unless in a country or region described above), including Mexico, South America, Central America, Caribbean region, and Antarctica	Autodesk, Inc., a Delaware corporation	(i) State of California, and (ii) to the extent controlling, federal laws of the United States	(i) United States District Court for the Northern District of California in San Francisco, or (ii) courts of the State of California, County of San Francisco.

(b)   Binding Arbitration and Dispute Resolution for United States and Canada

If Your principal place of business (or, if You are an individual, Your residence) is in the United States or Canada, the following informal dispute resolution and binding arbitration provisions apply to You"

(i)   Informal Dispute Resolution and Binding Arbitration

designated the "Initial Test Cases" and will proceed to arbitration. The filing fees will be paid only for the Initial Test Cases; for all other Claims, the filing fees (together with any arbitrator consideration of the other Claims) will be held in abeyance, and neither You nor Autodesk will be required to pay any such filing fees. The arbitrator will render a final award for the Initial Test Cases within 180 days after the initial pre-hearing conference, unless such period is extended by the arbitrator. Thereafter, the results of the Initial Test Cases will be given to a mediator, and such mediator and the parties will have 90 days from the mediator's appointment (the "Mediation Period") to agree on a resolution or substantive methodology for resolving the remaining Claims. If the parties are unable to resolve the remaining Claims during the Mediation Period, either party may choose to opt out of the binding arbitration process and proceed in court with the remaining Claims. Notice of any opt-out must be provided in writing within 60 days after the close of the Mediation Period. Absent notice of an opt-out, the remaining Claims will be arbitrated individually in the order determined by the sequential numbers assigned to the Claims in the Mass Filing. Filing fees for each Claim will be due upon commencement of the arbitration of such Claim.

(iv) Determination of Arbitrability, Enforcement of Rights

The arbitrator will have the right to determine the arbitrability of any Claim.

Notwithstanding the foregoing arbitration provision, each party may enforce its, or its licensors', patent, copyright, or trademark rights in any court of competent jurisdiction.

(c)   Waiver of Class or Consolidated Actions

All Claims arising out of, or relating to, an Offering or these Terms must be arbitrated or litigated on an individual basis and not on a class basis. Claims of more than one customer or user cannot be arbitrated or litigated jointly or consolidated with those of any other customer or user.

(d)   Injunctive and Other Equitable Relief

Notwithstanding any other provisions of these Terms, if a Claim is subject to resolution in the specified court or courts under Section 17.4(a) (General) above, Autodesk may apply for injunctive relief and other equitable remedies (or their equivalent) in any jurisdiction or forum, including any available court. If a Claim is subject to arbitration, either party may apply to a court of competent jurisdiction for interim measures necessary to preserve the parties' rights, including pre-arbitration attachments or injunctions, and any such request will not be deemed incompatible with, or a waiver of, the agreement to arbitrate.

17.5 Force Majeure

for use by You or on Your behalf, subject to these Terms and with only those rights as are granted to all other Autodesk customers and their Authorized Users pursuant to these Terms. These Terms apply to Governmental Entity customers and Authorized Users except to the limited extent You are prohibited by the laws of Your jurisdiction from accepting any provisions of these Terms. If and to the extent any provision of these Terms is so prohibited, such provision will be deemed modified only to the extent reasonably necessary to conform to applicable law but to give maximum effect to the provision as written.

17.8 Verification of Compliance

Autodesk reserves the right to verify Your compliance with these Terms and may, at its discretion, do so by providing you with a report regarding Your noncompliant use of Offerings and/or by conducting a remote or on-site audit (any such action, a "Verification").

If a remote or on-site audit is required, Autodesk or its representative will provide You electronic written notification. You must use an Autodesk-approved tool to gather information from all devices accessing Your Offerings and obtain any necessary access and consent from Your Authorized Users. Within 15 calendar days of audit notification, You must submit Your audit results to the notifying party. Audit results must include machine IDs, serial numbers, Autodesk IDs, NT/Windows username, device ID and other information relating to Your Offerings.

If, through a Verification, Autodesk determines You are in violation of these Terms, You must immediately purchase new Offerings at least equal to the total of the value of the identified noncompliance and Autodesk's reasonable costs to complete the Verification.

Failure to comply with this Section 17.8 is a material breach of these Terms. Autodesk reserves the right to suspend and/or terminate Your access to Offerings as set forth in Section 16.2 (Autodesk's Right to Terminate or Suspend a Subscription or Account) above, as well as to seek any other remedies available at law or in equity as set forth in Section 17.4 (Autodesk Party, Governing Law, Dispute Resolution) above.

17.9 Assignment

You may not assign or otherwise transfer these Terms or Your rights or obligations under these Terms (whether by operation of law or otherwise) without Autodesk's prior written consent, and Autodesk may terminate these Terms (including Your rights under these Terms) if You are acquired by, or come to be controlled by, any other person or entity (whether by acquisition of shares, merger, or other transaction) without such written consent of Autodesk. Autodesk may assign or otherwise transfer these

there is any conflict between these General Terms or the Special Terms and the Additional Agreement, the Additional Agreement will control in relation to its subject matter to the extent set forth in the Additional Agreement.

Failure to enforce or exercise any provision of these Terms is not a waiver of such provision, unless such waiver is specified in writing and signed by the party against which the waiver is asserted.

17.13 DMCA

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the internet infringes their rights under U.S. copyright law. If You believe in good faith that materials made available by or through Autodesk infringe Your copyright, You (or Your agent) may send Autodesk a notice requesting that Autodesk remove the material or block access to it. If You believe in good faith that someone has wrongly filed a notice of copyright infringement against You, the DMCA permits You to send Autodesk a counter-notice. Notices and counter-notices are required to meet the then-current statutory requirements imposed by the DMCA. See **http://www.copyright.gov/** (http://www.copyright.gov/) for details. Notices and counter-notices should be sent to:

Copyright Agent Autodesk, Inc.
The Landmark @ One Market, Ste. 400
San Francisco, CA 94105 USA

E-mail: copyright.agent@autodesk.com
(mailto:copyright.agent@autodesk.com)Tel: +1 (415) 507.5000
Fax: + 1 (415) 507.6128

Autodesk suggests that You consult Your legal advisor before filing a notice or counter-notice.

18.   **Definitions**

"Additional Agreement" means any agreement signed directly with an Autodesk entity that expressly supplements or amends the Terms (for example, an enterprise business agreement).

"Authorized Users" or "Your Authorized Users" means (a) You (if You are an individual) and (b) identified individuals (such as Your individual employees, consultants and contractors and other individuals accessing and using an Offering) for whom You have acquired a subscription to an Offering. If an Offering allows You to designate Authorized Users for such Offering, You will be responsible for providing notice to, and obtaining agreement from, any such Authorized Users regarding the application of

"Customer Information Form" means a form completed by or on behalf of You and submitted to Autodesk (or to a reseller, distributor, or other third party), directly or indirectly, in connection with Your account, a subscription or other Offering.

"Documentation" means the then-current end-user documentation (including online, printed, or other documentation) and any technical or legal requirements for an Offering.

"Governmental Entity" means any nation or government, including the United States federal government, any state, municipality, or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, or judicial body pertaining to government, and any employee or official thereof.

"Metrics" means data and other information regarding access to and use of any Offerings (including Your access and use). Metrics includes information regarding usage of features, functions, storage and indexes and information regarding usage, volume, type, storage and processing of Your Content (but not Your Content itself). If Metrics includes any personal data, treatment of such personal data will be pursuant to the <u>Privacy Statement</u> <u>(https://www.autodesk.com/company/legal-notices-trademarks/privacy-</u> <u>statement).</u>

"Offerings" means Software, Cloud Services, and Benefits provided by Autodesk, and any subscriptions for such items.

"Offering Identification" means one or more designations by Autodesk that set forth (as applicable) the name of an Offering; the Offering Type; and the permitted number, Territory, and length of Your subscription. The Offering Identification may be (a) provided in a written confirmation or other notice issued to You by Autodesk, posted to Your account, transmitted via email, or otherwise made available to You; (b) located in the Offering or on or with any Autodesk packaging; or (c) obtained from Autodesk on request. Offering Identification does not include any designation, confirmation, packaging or other document provided by a reseller, distributor, or other third party.

"Offering Type" means the license type specified by Autodesk for a subscription (for example, single-user, multi-user, or Flex). Offering Types are set forth on <u>Offering Types and Benefits</u> <u>(https://www.autodesk.com/company/terms-of- use/en/offering-types-and-</u> <u>benefits)</u>.

"Output" means all results, work product, designs, prototypes or other items created or generated by or through any use of any Offering, including any

You will inform Autodesk promptly in writing of such court proceedings, and (ii) You will not serve Autodesk with a third party notice regarding such proceedings unless Autodesk requests in writing that You do so.

(c)   Nothing in these Terms will exclude or restrict (i) Autodesk's liability for death or personal injury caused by Autodesk's negligence or willful misconduct, (ii) other damages caused to You by Autodesk's fraud, willful misconduct or gross negligence, (iii) if applicable, Autodesk's strict liability for defects of products under applicable statutory law of a Member State of the European Union or the European Economic Area (e.g., the German Product Liability Act), or (iv) any other liability that cannot be excluded or restricted under applicable law.

(d)   The following provisions apply if You are contracting with Autodesk Ireland Operations Unlimited Company ("Autodesk Ireland") as a consumer and are a resident of either the United Kingdom or a country that is a Member State of the European Union or the European Economic Area. These provisions will control in case of a conflict with other provisions of these Terms.

(i)   Governing Law and Jurisdiction. If you are a consumer resident of the United Kingdom, these Terms are governed by English law. If you are a consumer resident of a country that is a Member State of the European Union or European Economic Area, these Terms are governed by Irish law. Nothing in these Terms will deprive You of the protections granted to You by the law of the country where you reside that cannot be derogated from by contract pursuant to the law of such country. Autodesk Ireland may bring a claim with respect to an Offering against You only in the courts of the country where You reside, and You have the right to bring a claim with respect to an Offering against Autodesk Ireland either in the courts of Ireland or in the courts of the country where You reside. In any case, You and Autodesk Ireland have the right to bring a counterclaim in the court in which, in accordance with this provision, the original claim is pending.

(ii)   Assignment. If Autodesk assigns or otherwise transfers these Terms, Autodesk will notify you of such transfer in advance and ensure that such transfer does not prejudice Your rights under these Terms. You may terminate these Terms (including any subscriptions hereunder) within thirty (30) days of receipt of such notice of transfer, and, if a resident of the United Kingdom, receive a refund for the prorated portion of any prepaid fees applicable to the remaining Offering Term of Your affected subscriptions. If You wish to assign or otherwise transfer these Terms (and your rights and obligations under these Terms) to another entity, You must deliver written notice to Autodesk requesting consent to such transfer. Autodesk's consent

(v)   Liability of Autodesk. Notwithstanding Section 14.3 (Limitations on Liability) above and Section 17.12 (Entire Agreement, No Waiver) above, such sections will not exclude Autodesk's liability to You for: (1) misrepresentations in voluntary statements about an Offering made by Autodesk to You that You rely on in purchasing the Offering; (2) failure to provide pre-contract information regarding an Offering that Autodesk is required by the law of the country where You reside to provide to You before purchasing the Offering; (3) if applicable, Autodesk's breach of implied terms that cannot be excluded or restricted under English law (including implied terms relating to satisfactory quality of, fitness for a particular purpose of, conformance to pre-contractual information relating to, or Autodesk's right to supply, digital content); or (4) if applicable, consequential or indirect losses that cannot be excluded or restricted under English law.

(vi)   Statutory Warranties. You may have statutory warranty rights under the law applying to You that cannot be excluded or restricted by agreement between You and Autodesk in advance. Such warranty rights will remain unaffected by these Terms. Autodesk offers or makes no further implied or statutory warranties or conditions regarding the Offerings, and explicitly disclaims all implied warranties and conditions to the maximum extent permitted by applicable law.

(vii)   Consumer Right of Withdrawal. Under applicable law, consumer residents of a Member State of the European Union or the European Economic Area have a statutory right to withdraw from their subscription to an Offering within 14 days of its purchase. How this right may apply is explained in Consumer Right of Withdrawal Information (https://damassets.autodesk.net/content/dam/autodesk/www/comp any/terms-of-use/EU-and-EEA-Consumer-Right.pdf). Please note that Your more favorable rights of return for refund that Autodesk voluntarily grants You under Section 3 (Return for Refund) above are not affected by this statutory right of withdrawal.

(e)   Contact Us. You may contact Autodesk Ireland by calling +353 1 571 8800, emailing Autodesk.Ireland.Inquiries@autodesk.com (mailto:Autodesk.Ireland.Inquiries@autodesk.com), or writing to Autodesk Ireland Operations Unlimited Company, 1 Windmill Lane, 2nd Floor, Dublin, Ireland D02 F206.

(f)   In addition, notwithstanding any limitations on Territory in these Terms, these Terms do not limit cross-border access or use (such as access or use in one Member State of the European Union of Offerings

(d) Autodesk will not be responsible for user error and may refer any such issues to a supporting reseller, distributor or similar third party, if any. You may be required to return the Offering to the address we provide to You at the time, at Your own cost.

(e) DESPITE ANYTHING ELSE IN THESE TERMS, IF ANY OFFERING IS SUBJECT TO THE MANDATORY WARRANTIES OR GUARANTEES OF THE COMPETITION AND CONSUMER ACT (CTH) OR OTHER APPLICABLE LAW IN AUSTRALIA (THE "LAW"), AND SUCH LAW PERMITS AUTODESK TO LIMIT ITS LIABILITY FOR BREACH OF THESE WARRANTIES OR CONDITIONS, THEN AUTODESK'S LIABILITY FOR BREACH OF ANY SUCH WARRANTY OR GUARANTEE WILL BE LIMITED, AT AUTODESK'S OPTION, TO THE REPAIR, REPLACEMENT OR REPERFORMANCE (OR THE COST OF DOING SO) OF THE RELEVANT OFFERING.

19.3 Mainland China, Hong Kong, and Macau

If You acquired Your subscription in mainland China, the "Territory" for such subscription is Mainland China. Likewise, if You acquired Your subscription in Hong Kong, the "Territory" for such subscription is Hong Kong; and if You acquired Your subscription in Macau, the "Territory" for such subscription is Macau.

Service Level Agreement

This Service Level Agreement ("**Agreement**") is made by and between Rand Worldwide, Inc., including its subsidiaries and affiliates (the "**Company**") and You (the "**Customer**" or "**Licensee**"), (both Company and Licensee shall collectively be known as the "**Parties**"). The terms and conditions of this Agreement shall apply to Company's delivery of consulting services and support (the "**Services**" or "**Support**") pursuant to the service level purchased by Licensee under the Proposal.

Software Support ("Common Support Features"):
- o "Company Support Hours" are Monday through Friday, 8 AM to 8 PM EST (excluding United States/Canada Company observed holidays)
- o The following information is required when contacting the Company's Solution Center for technical assistance; Support Contract Number, Company Name, User contact information, Product Name and Version, and a Detailed Description of the Issue
- o 24x7 access to the Resources pages of the IMAGINiT website including:
    - o Web-based case submission
    - o Ability to view, update, and re-open previous support cases
    - o Ability to search and view case history for your entire organization
    - o Ability to submit supporting file(s) to case for review via Dropbox

IMAGINiT Basic eSupport
IMAGINiT's Entry level, limited, technical support
- o Contact the IMAGINiT Solution Center by either of the following methods:
    - o Electronic case submission at: https://www.imaginit.com/My-Account/Support-Contracts/My-Cases
    - o Email to support at: support@rand.com
- o Eight (8) Business Hour Response Time, during Company Support Hours. (This does not ensure a resolution in said time frame, but that an IMAGINiT Support Technician will be working on the issue in this timeframe.)
- o Support coverage provided via email and electronic communications for:
    - o Basic Software Troubleshooting: Assist, troubleshoot, decipher, and solve software related issues such as, installation errors, software error messages, and software functionality issues (crashing).
    - o Coverage includes standard product configuration options and functionality (excludes customer customizations and special configurations)
    - o Company will assist client with logging product defects with OEM development staff (excludes retired/non-supported products)
    - o Coverage EXCLUDES User Performance Support (how-to questions), software customizations, file/drawing recovery, and special configurations

IMAGINiT PRIORITY SUPPORT:
IMAGINiT's premier telephone and online support
- o Includes all coverages of "IMAGINiT Basic eSupport" PLUS
- o Access via Toll-Free Telephone (1-888-528-4765) (in addition to online case submission and email)
- o Four (4) Business Hour Response Time, during Company Support Hours. (This does not ensure a resolution in said time frame, but that an IMAGINiT Support Technician will be working on the issue in this timeframe.)
- o Basic Software Troubleshooting (see above)
- o Limited User Performance Support (how-to questions); Support staff will make reasonable effort (up to 30 minutes) to give user direction to get started and will recommend options for accessing learning materials. (This is not a replacement for user training, but intended to help a user overcome an urgent knowledge gap and direct them to additional learning options.)
    - o Certain restrictions may apply. Please consult with Company for additional details.

ProductivityNOW STANDARD and ProductivityNOW PROFESSIONAL:
Unlimited access to IMAGINiT's ProductivityNOW eLearning and productivity platform combined with Priority telephone and online Support.
- o Includes all coverages of "IMAGINiT Priority Support" PLUS
- o 24x7 access to ProductivityNOW portal for access to eLearning curriculum and other productivity content
    - o eLearning portal provided by Company's designated learning management system provider. Please see Terms of Use for Portal for additional features and limitations)
- o Access to priority technical support, during Support Hours, via online "live chat" from within the ProductivityNOW portal (in addition to telephone and email access)

DESIGN ASSISTANCE and FLEXTIME SUPPORT Hours (plus Common Support Features):
IMAGINiT's pre-paid 'hourly' telephone and electronic support
- o Support activity time deducted in 15 minute increments
- o Includes Basic Software Troubleshooting
    - o Four (4) Business Hour Response, during support hours, for Basic Software Troubleshooting
- o Includes Expanded Installation Assistance and User Performance Support (how-to questions)

26.   TERMS AND CONDITIONS

Subject to Licensee's compliance with the Company's "Terms of Use" found within each of Company's websites/portals, Licensee agrees that:

6.   DEFINITIONS

a.   **Application** – means computer software and/or software as a service designed to help the Licensee perform specific tasks

b.   **Application Support** – means the support/services provided by Company pursuant to this Agreement

c.   **Authorized Users** – means Qualified Users whom the Licensee has designated as callers or points of contact for support

d.   **Basic Software Troubleshooting** – Assist, troubleshoot, decipher, and solve software related issues such as, installation errors, software error messages, and software functionality issues (crashes or not functioning per manufacture's documented standards).

e.   **User Performance Support** – Assistance/guidance with "how-to" or other user knowledge/education type questions

f.   **OEM** – Original Equipment Manufacturer

g.   **Proposal** – means the document outlining the terms and conditions of the level of support and applications purchased by Licensee from Company

h.   **Qualified Users** – means Licensee's personnel that have attended the minimum training courses prescribed by OEM or Company for the specific application and modules being supported

i.   **Response Time** – means the amount of time, under normal and/or reasonable circumstances, taken by the Company to respond to a request for Application Support.

j.   **Release or Upgrade** - means the distribution or commercial availability of an OEM Application

k.   **Software** – means software downloaded onto hardware and software as a service.

l.   **Support/Services Exclusions** – means those certain exclusions listed on Page 2 of this Agreement

m.   **Updates** – means an OEM software update, hotfix or service pack

2.   RESPONSE TIME and ESCALATION PROCESS

Company will use reasonable efforts to provide a response to Licensee within the Response Times outlined above per the specific level of service purchased for a properly reported request for Services or Support. Company shall not be held liable for delays in responding to the Licensee's request where such delays are attributable to communication problems beyond Company's control or a Force Majeure event.

From time to time, a request may need to be escalated to the OEM to determine if the request is a software defect, intended functionality, or to be reported as an enhancement request. During the escalation process, Company shall use reasonable efforts to provide Licensee with progress updates; provided, however, in no way shall Company be responsible, or will Company guarantee a suitable resolution to Licensee in a timely manner.

Note: In order to effectively communicate an issue to the OEM, the Company must ensure the following:

a.   To be able to consistently reproduce the issue or scenario.

b.   Provide the current Release number and update or hotfix level of the software application and operating system

c.   Provide step-by-step instructions in order to reproduce the issue or scenario

d.   If required, deliver a data sample and/or sample of an affected file(s) relating to the issue or scenario

e.   If requested, remote web access to allow OEM personnel to remotely verify customer environment and scenario

3.   LICENSEE'S OBLIGATIONS

Licensee represents that prior to requesting any Application Support that all Applications are certified by the Licensee and in accordance with the OEM's recommendations for hardware and operating system.

In order to receive appropriate Application Support, Licensee shall comply with the following requirements:

- Licensee will follow appropriate Application Support protocol as outlined by the Company
- Use the appropriate means of communication provided by the Solution Center (phone number, email, tools from the ProductivityNOW Portal, and/or account manager).
- Only Authorized Users to engage the Company for support or access the eLearning functions
- Licensee to provide the necessary details required for the Solution Center representative to address the issue (i.e., step-by-step instructions, recorded video or data set).
- Obtain the latest and current Update for the relevant Application version
- Create a backup or save work before pursuing a solution to the support request
- Ensure the Company is notified of any of the following:
    - Departure or reallocation of Authorized User(s)
    - Arrival of new personnel to be designated as a new Authorized User
        - Must be a Qualified User and subject to Company's approval

Licensee's failure to comply with the above may affect the quality of Services/Support received by the Company.

1.   TERMINATION, SUSPENSION, OR MODIFICATION

Company reserves the right, in its sole discretion, , discontinue, or terminate this Agreement, at any time, with prior written notice to Licensee and the terms and conditions in effect on the date that service is either requested or rendered will govern the relationship between the parties. Company may suspend provision of the Service or Support or any part thereof for the purpose of carrying out or implementing necessary repairs, maintenance or

HUNDRED SIXTY FIVE (365) DAY PERIOD AFTER THE EFFECTIVE DATE OF THE PROPOSAL AND THIS AGREEMENT. COMPANY WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS RELATING TO THE SUPPORT OR SERVICES INCLUDING ACCESS TO THIRD PARTY LINKS SUCH AS VIDEOS OR HYPERLINKS EMBEDDED WITHIN THE SERVICES OR SUPPORT. IN THE EVENT OF NONACCESSABILITY, THE LICENSEE'S SOLE REMEDY WITH RESPECT TO NONACCESSIBILITY OF THE SERVICES/SUPPORT OR THIRD PARTY PRODUCTS/SERVICES/SUPPORT ARE AT THE COMPANY'S SOLE DISCRETION AND ARE LIMITED TO A PRORATED REFUND OF THE PREPAID FEES PAID BY LICENSEE TO COMPANY BASED UPON THE TOTAL OUTAGE TIME OF NONACCESSABILITY OF THE SERVICES/SUPPORT OR THIRD PARTY PRODUCTS/SERVICES/SUPPORT. ALL REFUNDS ARE DETERMINED AND EQUAL TO 1/365TH (IF BASED UPON A ONE (1) YEAR PROPOSAL) OR 1/1,095TH (IF BASED UPON A THREE (3) YEAR PROPOSAL) OF THE PREPAID FEES PAID BY LICENSEE TO COMPANY FOR EACH TWELVE (12) CONSECUTIVE HOURS OF NONACCESSABILITY. NONACCESSABILITY SHALL MEAN LICENSEE IS UNABLE TO ACCESS SUBSTANTIALLY ALL OF THE SERVICES/SUPPORT/THIRD PARTY LINKS WITHIN THOSE TWELVE (12) CONSECUTIVE HOURS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO LICENSEE.

9. MISCELLANEOUS

In the event that any provision in this Agreement is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent permitted by law and the remaining provisions will remain in full force and effect to the maximum extent permitted by law. The failure of a party to enforce any right or provision of this Agreement will not be deemed a waiver of such right or provision. Licensee may not assign this Agreement (by operation of law or otherwise) without the prior written consent of Company and any prohibited assignment will be null and void. Company may assign this Agreement or any rights hereunder without Licensee's consent. The relationship of the parties under this Agreement is that of independent contractors, and this Agreement will not be construed to imply that either party is the agent, employee, or joint venturer of the other. This Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware excluding that body of law pertaining to conflict of laws. Any legal action or proceeding arising under this Agreement will be brought exclusively in courts located in Delaware and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. Licensee agrees that this Agreement and the rules, restrictions and policies contained herein, and Company's enforcement thereof, are not intended to confer and do not confer any rights or remedies upon any person other than Licensee and Company. This Agreement together with the Company's Terms of Use, Company Proposal, and the rules and policies of Company constitutes the entire agreement between Company and Licensee with respect to the subject matter hereof.

PART B: SERVICES TO BE PERFORMED

1. REVISED WORK AUTHORIZATION

☐ No

☐ If yes, provide a brief description of the change(s).

2. SCOPE OF SERVICES TO BE PERFORMED

The Contractor shall perform the service(s) described below in accordance with all of the terms and conditions of the Agreement. (Insert a detailed Scope of Services below or attach as a separate file.) Scope of Services and cost proposal shall meet all of the provisions of Section 9 of Exhibit A and Section 4 of Exhibit B.

Such liquidated damages shall be the City's sole and exclusive remedy for Contractor's failure to meet the agreed delivery schedule.

5. ACCEPTANCE CERTIFICATE

☐ Acceptance Certificate not required.

☐ Acceptance Certificate required.