

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **ARTICLE 1 PARTIES AND PURPOSE**

#### **Section 1.1 Parties**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2026, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and WEBSOFT DEVELOPERS INC. a California corporation (hereinafter "CONTRACTOR").

#### **Section 1.2 Purpose**

CITY selected the CONTRACTOR to provide the services required in accordance with the Scope of Services attached, as Exhibit A and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Mobile MMS Subscription (hereinafter "Project") as set forth in the Scope of Services attached as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

### **ARTICLE 2 SCOPE OF SERVICES**

#### **Section 2.1 Scope of Services**

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### **Section 2.2 Time for Commencement and Completion of Work**

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall

remain in contact with reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

**Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

**Section 2.6 Term**

The term of this Agreement commences on August 1, 2026 and terminates upon the completion of the Scope of Services or on July 31, 2029, whichever occurs first.

**Section 2.7 Option to Extend Term of Agreement**

At its option, CITY may extend the terms of this Agreement for an additional two (2) one (1) - year extension; provided, CITY gives CONTRACTOR no less than thirty (30) days written notice of its intent prior to expiration of the existing term. In the event

CITY exercises any option under this paragraph, all other terms and conditions of this Agreement continue and remain in full force and effect.

The total duration of this Agreement, including the exercise of any option under this paragraph, shall not exceed five (5) year(s).

### **ARTICLE 3** **COMPENSATION**

#### **Section 3.1 Compensation**

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

#### **Section 3.2 Method of Payment**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

#### **Section 3.3 Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advance and in writing, by CITY.

#### **Section 3.4 Auditing**

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and

inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS PROVISIONS**

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any subcontractor on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

**Section 4.2 ADA Compliance**

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**Section 4.3 Indemnification and Responsibility for Damage**

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees and costs), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence, sole negligence, or sole willful misconduct of the City of Lodi, its elected and appointed officials, directors, officers, employees and volunteers. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONTRACTOR shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. The defense and indemnification obligations required by this Agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations set forth herein.

**Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

**Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 Insurance Requirements for CONTRACTOR**

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

**Section 4.7 Successors and Assigns**

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

**Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:                      City of Lodi  
   221 West Pine Street  
   P.O. Box 3006  
   Lodi, CA 95241-1910  
   Attn: Andrew Richle

To CONTRACTOR:      Websoft Developers, Inc.  
   2020 Research Park Drive STE 140  
   Davis, CA 95618-6150  
   Attn. Sean Dingman

**Section 4.9 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

**Section 4.10 CONTRACTOR is Not an Employee of CITY**

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

**Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's

fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**Section 4.19 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.20 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

**Section 4.21 Federal Transit Funding Conditions**

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit D apply to this Agreement. In the event of a conflict between the terms of this Agreement or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

**Section 4.22 Counterparts and Electronic Signatures**

This Agreement and other documents to be delivered pursuant to this Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby, bearing an original manual or electronic signature by facsimile transmission (including a facsimile delivered via the Internet), by electronic mail in "portable document format" (".pdf") or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software will have the same effect as physical delivery of the paper document bearing an original signature.

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IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

ATTEST:

CITY OF LODI, a municipal corporation

\_\_\_\_\_  
OLIVIA NASHED  
City Clerk

\_\_\_\_\_  
AARON M. BUSCH  
Interim City Manager

APPROVED AS TO FORM:

WEBSOFT DEVELOPERS INC.  
a California corporation

By: \_\_\_\_\_

KATIE O. LUCCHESI  
City Attorney

*Interim*

*John M. Lucchese*  
*[Signature]*

By: \_\_\_\_\_

Name: Manoj Desai  
Title: President

**Attachments:**

Exhibit A/B – Scope of Services & Fee Proposal

Exhibit C – Insurance Requirements

Exhibit – Federal Transit Funding Conditions (if applicable)

Funding Source: \_\_\_\_\_

(Business Unit & Account No.)

Doc ID: \\PWADC02\msc\$\GROUP\ADMIN\Council\2026\05-20-26\Websoft Developers, Inc

CA: Rev.03.2026-VS (CA Formatted)

# Exhibit A/B

Order Form: Q-50862-1  
 Creation Date: 3/19/2026, 2:48 PM  
 Expires On: 5/3/2026



Phone: (866) 777-0069  
 Email: info@sprbrk.com

**Ship To:**  
 Andrew Richle  
 Lodi, CA  
 221 W Pine Street  
 Lodi, California 95240  
 arichle@lodi.gov

**Bill To:**  
 Andrew Richle  
 Lodi, CA  
 221 W Pine Street P.O. Box 3006  
 Lodi, California 95240  
 arichle@lodi.gov

Account Manager	E-mail	Phone Number	Payment Terms
Sean Dingman	sean.dingman@websoftdev.com	(916) 501-1590	Net 30

Annual Product Pricing				
PRODUCT	RATE	QTY	DISC (%)	NET PRICE
MobileMMS Subscription	USD 66,619.00	1	0.000	USD 66,619.00
<b>Annual Product Pricing Total:</b>				USD 66,619.00

Fixed Fee Professional Services				
PRODUCT	RATE	QTY	DISC %	NET PRICE
Fixed Fee Professional Services	USD 19,000.00	1	0.000	USD 19,000.00
<b>Fixed Fee Professional Services Total:</b>				USD 19,000.00

**Grand Total: USD 85,619.00**  
 \* excludes applicable sales tax

## Order Details

Customer Name: Lodi, CA

Customer Contact: Andrew Richle

Governing Agreement(s): This Order Form is governed by the applicable terms found at:  
MSA:  
<https://sprbrk.app.box.com/v/websoft-saas-terms>

Professional Services:  
<https://sprbrk.app.box.com/v/websoft-svcs-terms>

Term(s): 3 Years

## Order Terms

In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction.

- This Order Form shall become effective as of the last date of signature (the "Effective Date").
- Order Start Date: Software Licenses, Subscriptions, Maintenance, and Hosting commence upon the earlier of a) date of delivery\* or log-in to hosted software to Customer; or b) 60 days after Order Form Effective Date.
- Subscriptions, Maintenance, Hosting, and Support ("Recurring Services") continue from the Order Start Date through the term listed in this Order Form (or if not listed, one (1) year).
- Orders for Recurring Services auto-renew for three (3) years or for the term specified in this Order Form, unless the Customer or Springbrook provides a written notice of non-renewal at least sixty (60) days prior to the expiration of the current Order Term.
- Subscription Service fees and any Recurring Services will be subject to an automatic annual increase by not more than seven and a quarter percent (7.25%) of the prior year's Subscription Service fees ("Standard Annual Price Increase").
- Any Software Licenses or Hardware are one-time non-refundable purchases.

*\* The date of delivery of software to the Customer is the date the software is made available to the Customer, either by delivery of software or delivery of first log-in to a hosted environment, which may be either a test or production environment. This date of delivery is frequently earlier than the dates professional services are completed, the Customer completes user acceptance testing, the Customer distributes additional logins to end-users, and the Customer go-live in a production environment.*

## Invoice Timing and Delivery

Invoices are delivered electronically via e-mail to the billing contact on file for the Customer. Customer invoices are issued for the full amount of software and services purchased as follows:

Products Ordered	Invoice Timing
Software Licenses, Subscriptions, Maintenance, and Hosting (New):	Annually in advance upon Order Start Date.
Software Subscriptions, Maintenance, and Hosting (Add-Ons):	Upon the order start date, order will be pro-rated to sync with the existing anniversary billing date and will renew annually thereafter.
Software Subscriptions (Migrations):	Upon the order start date, order will be synced with the existing anniversary billing date and will renew annually thereafter unless specified in the Special Order Terms. This order replaces and supersedes any previously executed order as it relates to the products listed within this order. Upon delivery of new product, customer will receive a prorated credit for any prepaid, unused maintenance fees that will be applied to the customer's first invoice.
Software Licenses, Subscriptions, Maintenance, and Hosting (Renewal):	Sixty (60) days in advance of the Order Start Date.
Print Services and Transaction Fees:	Monthly, in arrears for transactions in the prior month.
Hardware and One-Time Licenses:	Upon the Effective Date of this Order Form.
Estimated Time and Material Professional Services, On-Site Professional Services, and Travel Expenses*:	Monthly, in arrears for services in the prior month unless specified in Special Term.
Implementation Fixed Fee Professional Services:	The Effective Date of this Order Form unless specified in Special Terms.

## Professional Service Key Terms and Conditions:

- **Time and Material Pricing:** Professional Services time and material pricing is based on expected hours using Springbrook's standard implementation approach. While our goal is to provide accurate hour estimates, there may be variations in actual hours and charges. If project costs surpass the estimated hours within this order form by the greater of \$15,000 or 20%, a signed change order is necessary to proceed. Adjustments below this threshold will be implemented and invoiced as incurred.
- **\*On-Site Professional Services:** On-Site professional services are billed at a daily minimum rate, regardless of time spent on-site. Travel expenses related to on-site travel will be invoiced as a separate line item as they are incurred.
- **Cancellation or Postponement:** Customer agrees to participate in all scheduled meetings and minimize repeated cancellations. Customer shall provide no less than two (2) business days' written notice should any scheduled meeting, training session or other activity need to be cancelled or postponed. If Customer fails to provide such notice, Springbrook shall invoice the Customer for the lost or delayed scheduled time, with a minimum charge of two (2) hours. Additional charges may apply based on the resources and preparation required for the meeting.

- **Customer Responsibilities:** The customer will provide adequate internal resources and ensure the accuracy of all information provided to Springbrook. Customers are responsible for extracting data from any legacy systems and transferring the data into Springbrook's import templates.

## Special Order Terms

Special Order Terms (if any):

Recontract for 8/1/2026-7/31/2027, 3 Years, 7.25% uplift

8/1/2026-7/31/2027 \$66,619

8/1/2027-7/31/2028 \$71,449

8/1/2028-7/31/2029 \$76,629

**NOT TO EXCEED \$233,697.00**

**By signing, both parties agree to the terms and conditions set forth in this agreement.**

\* If the Customer requires a PO number on invoices, the Customer must provide Springbrook with the PO number and a copy of the PO prior to invoice issuance. If a PO number is not provided prior to the invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.

**Websoft Developers, Inc.**

**Lodi, CA**

Signature:

Signature:

Name (Print):

Name (Print):

Title:

Title:

Date:

Date:

Purchase Order # (if required) \_\_\_\_\_



**Websoft Developers Inc.**  
**CLOUD SERVICE MASTER AGREEMENT**  
**TERMS AND CONDITIONS**

These Terms and Conditions, together with each Order Form entered into by the Parties that references such Terms and Conditions, constitute a binding agreement (“**Agreement**”) by and between Websoft Developers Inc. (“**Websoft**”) and the Customer identified on the Order Form (“**Customer**”). These Terms and Conditions become effective as of the date of the related Order Form or use of the Websoft Services. Each of Websoft and Customer is referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

Use of the Cloud Service, as defined below, is subject to the Agreement. If Customer is entering into the Agreement on behalf of a company, organization, or another legal entity (an “**Entity**”), Customer is agreeing to this Agreement for that Entity and representing to Websoft that it has the authority to bind such Entity to the Agreement.

Recitals

WHEREAS, Websoft has developed an ERP solution for local government agencies that is offered as a SaaS-based cloud service (the “**Cloud Service**”); and

WHEREAS, Customer is interested in obtaining the functionality provided by the Cloud Service;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Agreement

1. **Definitions.** Certain capitalized terms used in the Agreement shall have the definitions set forth below.
  - (a) **Affiliate:** means an entity that controls, is controlled by or is under common control with a Party to the Agreement, where control means the legal or beneficial ownership of more than fifty percent (50%) of the voting shares of an entity or the ability to direct or cause the direction of management and policies of such entity.
  - (b) **Authorized User:** means one individual natural person, authorized by Customer to use the Cloud Service. Authorized Users may include but are not limited to Customer’s employees, contractors and agents. Each Authorized User will be associated with a single unique email address and password for purposes of accessing (and being identified within) the Cloud Service.
  - (c) **Channel Partner:** means an authorized reseller, distributor, or other channel partner of Websoft from which Customer is able to procure some or all of the Websoft Services.

- (d) **Cloud Software:** means the Websoft proprietary software, in object code format, including Documentation, updates, patch releases, and upgrades with respect thereto, that Websoft makes available for download or otherwise provides for use in connection with the Cloud Service. Cloud Software excludes any OSS and other third-party's software. If and as designated in the Specifications, the Cloud Software may be inclusive of application programming interfaces ("APIs") developed by Websoft to enable interaction and integration with the Cloud Service.
- (e) **Cloud Specifications:** means the online specifications for the Cloud Service, as made available by Websoft at <https://sprbrk.box.com/v/websoft-software-specs> (which URL location and content may be updated from time to time by Websoft).
- (f) **Confidential Information:** means nonpublic, confidential, or proprietary information regarding either Party's business or any aspect of this Agreement, including, without limitation, technology, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes or data codes, entity-relation or workflow diagrams, product plans, pricing, customer information and other technical, financial, marketing and business information. Information that is marked or identified as confidential or proprietary or that would reasonably be considered to be confidential based on the nature of such information and the circumstances under which it is disclosed shall be deemed to constitute Confidential Information. Confidential Information may include confidential or proprietary information of third parties that the Disclosing Party is permitted to disclose, and does disclose, to the Recipient hereunder. Confidential Information may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding the above, "Confidential Information" shall not include information that: (i) the Recipient can demonstrate was in its possession at the time of disclosure and was not acquired by the Recipient directly or indirectly from the Disclosing Party on a confidential basis; (ii) becomes available to the Recipient on a non-confidential basis from a source other than Disclosing Party (whether directly or indirectly) and which source to the best of Recipient's knowledge did not acquire the information on a confidential basis; (iii) is approved for release or use without restriction by written authorization of an officer of the Party owning the Confidential Information; (iv) is independently developed by or for the Recipient without use of the Disclosing Party's Confidential Information; (v) subject to mandatory disclosure pursuant to a state's public records laws, or (vi) has become generally available to the public without breach of this Agreement by the Recipient or an affiliate of the Recipient.
- (g) **Customer:** means the entity that purchases a Subscription to the Cloud Service directly from Websoft or through a Channel Partner.
- (h) **Customer Data:** means any and all content, eDocuments, materials, data and information that Customer or its Authorized Users, or others who input data into the Cloud Service, such as citizens of the jurisdiction to which Customer provides services, enter into the Cloud Service including but not limited to, personal information, information exchanged between Customer and an Authorized User or an Authorized User and a third party using the Cloud Service, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts.

- (i) **Disclosing Party:** means a Party that discloses Confidential Information to a Recipient.
- (j) **Documentation:** means information describing the features, functionality, operating instructions and other aspects of the Cloud Service or Cloud Software. Information contained on Websoft publicly facing website does not constitute Documentation.
- (k) **Effective Date:** means the date of the first Order Form that is governed by these Terms and Conditions.
- (l) **Fees:** means amounts payable by Customer to Websoft as consideration for the Websoft Services.
- (m) **Intellectual Property Rights:** means any and all rights existing now or in the future under laws relating to patents, copyright, industrial design, moral rights, trade secrets, trademarks, publicity rights, and any and all similar proprietary rights, and any and all applications for registration, letters patent, renewals, extensions, divisions, continuations, reissues, and restorations thereof, now or hereafter in force and effect anywhere in the world.
- (n) **Maintenance and Support Services:** means Websoft obligations related to availability, error resolution, response to support requests, bug fixes, and the provision of updates and upgrades to the Cloud Software or Cloud Service as further described in Exhibit A hereto.
- (o) **Open Source Software or OSS:** means software components that are licensed under a license approved by the Open Source Initiative or similar open source or freeware license and may be embedded in the delivered Cloud Software.
- (p) **Optional Cloud Services:** mean the optional add-ons to the Cloud Service that may be available for purchase either directly from Websoft or through Channel Partner, as more particularly described or identified in the applicable Order.
- (q) **Order Form:** means a purchase document executed by Customer and Websoft in which Customer orders Websoft Services.
- (r) **Order Terms:** means the ordering information (such as order date, products, quantity and similar information) and terms and conditions specified on an Order Form.
- (s) **Personal Information:** means any data that can identify or locate an individual.
- (t) **Professional Services:** means services relating to the Cloud Service, such as implementation, customization, and training.
- (u) **Recipient:** means a Party that receives Confidential Information from a Disclosing Party.
- (v) **Websoft Services:** means the Cloud Service, Cloud Software, Maintenance and Support Services, and Professional Services.
- (w) **Subscription:** means a paid for right to access and use the Cloud Service.



- (x) **Subscription Period(s):** means the duration of a Customer's and its Authorized Users' active, paid Subscription to the Cloud Service, as designated in the Order Form(s).
- (y) **Supported Modification:** means a configuration of or modification to the Cloud Service requested by Customer that can be consistently supported by Websoft via APIs, does not require direct database changes and is capable of being tested and maintained by Websoft.
- (aa) **Term:** shall be the period of time for which this Agreement is in effect, as further set forth in Section 13. Term is different from a Subscription Period.
- (bb) **Third Party Services:** means products, services, technology, and methods other than proprietary Websoft Services.

## 2. Cloud Service Terms and Conditions.

- (a) Subject to compliance with the terms and conditions of the Agreement, including advance receipt of applicable Fees, Websoft will make the Cloud Service available to Authorized Users during the Subscription Period for use in connection with the internal business purposes of Customer.
- (b) Websoft hereby grants to Customer a limited, non-exclusive, non-transferrable right to access, implement, and configure the Cloud Software during the Subscription Period, solely for its internal business purposes in connection with use of the Cloud Service and in accordance with the Specifications.
- (c) Customer will ensure that all of its Authorized Users using the Cloud Services under its account comply with all of Customer's obligations under this Agreement. Customer is responsible for all activity (whether or not authorized by Customer) occurring under Customer's account, including acts and omissions of its Authorized Users and individuals using credentials of Authorized Users, as though they were those of Customer. Customer will notify Websoft promptly of any unauthorized access or use of the Websoft Services.
- (d) Customer will be responsible for meeting minimum system requirements for use of the Cloud Service accessible at <https://sprbrk.box.com/v/websoft-minimum-requirements> (which URL location and content may be updated from time to time by Websoft ) for use of the Cloud Service;
- (e) Customer will use the Websoft Services only in accordance with the Agreement, the applicable Documentation, laws and government regulations, and any written instructions provided by Websoft to Customer.
- (f) The Cloud Service is provided with a limit of five hundred gigabytes (500GB) of data storage for all cloud environments. Additional storage can be purchased from Websoft by Customer in blocks of five hundred megabytes (500MB), with a price of one thousand dollars (\$1,000) per year. If a Subscription Period for the Cloud Service is nearing its expiration date or is otherwise terminated, Websoft will initiate its data retention processes, including the deletion of Customer Data from systems directly controlled by Websoft. Websoft Data Storage Policy can be accessed at <https://sprbrk.box.com/v/websoft-data-storage-policy> (which URL location and content may be updated from time to time by Websoft ).

- 3. Restrictions on Use of the Cloud Service and Cloud Software.** Except as otherwise expressly provided in the Agreement (including any Exhibits), Customer shall not (and shall not permit any Authorized User or third party to):
- (a) make the Cloud Service available to anyone other than Authorized Users;
  - (b) use the Cloud Service, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer's authorized use or usage metrics as set forth in the Agreement, including the applicable Order Form(s);
  - (c) sublicense, sell, resell, transfer, assign, distribute, share, lease, make any external commercial use of, outsource, use on a timeshare or service bureau basis, or use in an application service provider or managed service provider environment, or otherwise generate income from, the Websoft Services;
  - (d) modify, obscure, alter, or remove any confidentiality or proprietary rights notices contained in the Websoft Services;
  - (e) decompile, disassemble, or reverse engineer any portion of the Cloud Software or Cloud Service, or attempt to discover any source code or other operational mechanisms of the Cloud Software or Cloud Service (except where such restriction is expressly prohibited by law without the possibility of waiver, and then only upon prior written notice to Websoft);
  - (f) use any third-party software provided with the Cloud Software or Cloud Service other than in connection with the Cloud Software or Cloud Service;
  - (g) use the Websoft Services in violation of any applicable laws and regulations;
  - (h) use the Websoft Services to (1) store, download or transmit infringing, libelous, or otherwise unlawful or tortious material, or malicious code or malware, or (2) engage in phishing, spamming, denial-of-service attacks, spreading viruses or other harmful code, or other fraudulent or criminal activity, (3) interfere with or disrupt the integrity or performance of third party systems, the Cloud Software, Cloud Service or data contained therein, (4) violate or infringe upon the rights of a third party, including those pertaining to contract, intellectual property, privacy, or publicity, or (5) attempt to gain unauthorized access to the Cloud Software or Cloud Service;
  - (i) access or use the Websoft Services (inclusive of any APIs) for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Cloud Service or allow access by a direct competitor of Cloud Service;
  - (j) access the Websoft Services for purposes of monitoring availability, penetration, or security testing, or any benchmarking;
  - (k) obtain or attempt to obtain intellectual property rights to any component of the Websoft Services (inclusive of APIs) other than those expressly provided herein;
  - (l) create derivative works based on the Websoft Services;
  - (m) use or allow the use of, the Websoft Services by anyone located in, under the control of, or that is a national or resident of a U.S. embargoed country or territory or by a prohibited end user under

export control laws of the United States or any other applicable jurisdiction.

4. **Customer Cooperation.** Customer is responsible for selecting Authorized Users and represents and warrants it shall select Authorized Users who are qualified to operate the Cloud Service and are familiar with the information, calculations, and reports that serve as input and output. Any data entry errors are the responsibility of Customer and Websoft does not assume the cost of any necessary servicing, repair or correction arising from such errors. Customer acknowledges that successful installation, implementation and use of the Websoft Services cannot be accomplished by Websoft 's efforts along and requires substantial effort and cooperation by Customer. Both Websoft and Customer shall at all times use their best efforts to actively participate and cooperate in data conversion, system installation, implementation, training and use, shall provide each other accurate and timely information, and shall afford each other reasonable access to information and facilities. All substantive communication between Websoft and Customer will take place between Websoft and a project manager designated by Customer.
5. **Third Party Services.** Customer may choose to obtain products and services that are provided or supported by third parties ("**Third-Party Services**") for use in conjunction with the Websoft Services either directly from the third party providing the Third Party Services or indirectly through Websoft where Websoft acts as a reseller of the Third Party Services. Third Party Services may require Customer to enter into a license or other agreement with such third party for use of the Third-Party Services. Customer is solely responsible for obtaining any such license or other agreement for the Third-Party Services. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THIRD-PARTY SERVICES ARE PROVIDED PURSUANT TO THE TERMS OF THE APPLICABLE THIRD-PARTY LICENSE OR SEPARATE AGREEMENT (IF ANY) BETWEEN THE PROVIDER OF THE THIRD-PARTY SERVICES AND CUSTOMER, CUSTOMER MAY SEEK REDRESS FOR USE OF THE THIRD-PARTY SERVICES SOLELY FROM THE THIRD PARTY PROVIDING THE THIRD-PARTY SERVICES, AND WEBSOFT ASSUMES NO RESPONSIBILITY FOR, AND SPECIFICALLY DISCLAIMS ANY LIABILITY OR OBLIGATION WITH RESPECT TO, ANY THIRD-PARTY SERVICE.
6. **Maintenance and Support Terms.**
  - (a) Support. Maintenance and Support Services, as described in Exhibit A, are included in the Cloud Service Subscription for no additional fees, except as provided otherwise in Exhibit A.
  - (b) Partner Support. Notwithstanding anything herein to the contrary, if Customer receives Maintenance and Support Services from an authorized Channel Partner, then the terms for such services agreed upon by Customer and such Channel Partner shall govern in lieu of those set forth in the Exhibit A attached hereto, and Websoft shall have no support obligations to Customer.
7. **Ordering Process.**
  - (a) Order Forms. Customer may purchase the Websoft Services (Cloud Service Subscriptions, Cloud Software licenses or Professional Services) by executing and submitting an Order Form. Execution of an Order Form referencing these Terms and Conditions makes them binding upon Customer, as does any access or use of the Websoft Services. Upon execution of an Order Form by both Parties and subject to Customer's payment of the corresponding Fees, Websoft will make the Cloud Service or Cloud Software, as applicable, available to Customer. Any terms and conditions contained in any quote, invoice, or purchase order that are inconsistent with or are in addition to the terms and conditions of the Agreement will be deemed stricken, unless expressly agreed to in writing by Websoft with explicit reference to the accepted terms and conditions. Upon acceptance of an Order



Form, it will become part of the Agreement and will supersede any conflicting terms herein.

- (b) No Requirement for Purchase Order. Customer acknowledges that a purchase order is not required and is for administrative convenience only, and that Websoft has the right to issue an invoice and collect payment without a corresponding purchase order, provided, however, that if a Customer's procurement procedure requires the issuance of a purchase order or a purchase order number on a pertinent Order Form or Statement of Work, the purchase order is required to be provided to Websoft. If the Customer issues a purchase order, then it shall be for the full amount set forth in the applicable Order Form or Statement of Work.

## 8. Payment Terms.

- (a) Pricing. Customer will be invoiced for those amounts and at those prices set forth in an Order Form. Fees do not include any customization of the Cloud Software or Cloud Service (nor support for any such customizations, unless otherwise agreed in writing). If Customer's usage of the Cloud Software or Cloud Service is in excess of those amounts set forth in the Order Form, Customer may be billed for those overages. Customer acknowledges that purchases under the Agreement are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Websoft regarding future functionality or features of the Websoft Services. Except as otherwise specified herein or in an Order Form, (i) fees are based on the specified Websoft Services purchased, (ii) payment obligations are noncancelable and fees paid are non-refundable, except for amounts paid in error that are not actually due under the Agreement or as otherwise expressly provided herein, and (iii) quantities purchased cannot be decreased during the relevant Subscription Period.
- (b) Payments. Websoft will invoice Customer in advance for the Cloud Service. Customer shall pay Invoices within thirty (30) days of the invoice date. If Customer orders additional Subscription quantities or services part-way through an existing Subscription Period the initial Subscription Period for the additional quantity or services will be made coterminous with the existing Subscription Period and the Cloud Service Fee for such additional quantity will be prorated accordingly. Fees for Optional Cloud Service will be due at the same time as payment for the corresponding Cloud Service, or (if applicable) as otherwise specified in the applicable Order Form or governing terms. Customer is responsible for keeping Websoft accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. Websoft shall have no responsibility for any invoices that are not received due to inaccurate or missing information provided by Customer. Customer shall pay interest on all payments not received by the invoice due date set forth above at a rate of one and a half percent (1.5%) per month or the maximum amount allowed by law, whichever is lower. All amounts due under this Agreement shall be paid by Customer in full without any set-off, counterclaim, deduction or withholding. Subscription Fees will be subject to an automatic annual increase in the amount set forth in the applicable Order Form. ("**Standard Annual Price Increase**"). Notwithstanding anything herein to the contrary, if Customer makes its payments pursuant to this Agreement to a Channel Partner, then the payment terms agreed by Customer and such Channel Partner shall govern to the extent anything in this Section 8 conflicts with such payment terms.

- (c) **Taxes.** Fees for Websoft Services do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes. If Websoft has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Websoft with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, Websoft is solely responsible for taxes assessable against it based on Websoft's income, property and employees.
- (d) **Suspension of Service.** If any amount owing by the Customer for the Cloud Service is ninety (90) or more days delinquent, Websoft may, in its sole discretion and cumulative to its other remedies under this Section, temporarily cease providing to Customer the Cloud Service.

## 9. Ownership.

- (a) **Ownership of Websoft Services.** As between Websoft and Customer all right, title and interest to the Cloud Software, the Cloud Service, all technology underlying the foregoing, the Documentation, any improvements, design contributions, updates, or derivative works thereto, any knowledge or processes related thereto and/or provided hereunder, and all associated Intellectual Property Rights, belong solely to Websoft, and is protected under the laws of the United States and the individual states and by international treaty provisions. Websoft reserves all rights not granted herein.
- (b) **Limited Rights.** Customer shall only receive those rights in the Websoft Services that are expressly granted to it hereunder. Customer acknowledges that the rights granted under this Agreement, as they pertain to Maintenance and Support and to the Cloud Software and Cloud Service, do not provide Customer with title to or ownership of the Cloud Software or Cloud Service.

**10. Feedback.** Customer grants Websoft a royalty-free, fully-paid, worldwide, transferable, sub- licensable, irrevocable, perpetual license to use or incorporate into the Websoft Services (or Websoft's other software or services) any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or Authorized Users relating to the operation or features of the Websoft Services.

## 11. Security.

- (a) **Customer Responsibilities.** Information or data generated by the Cloud Service, that is provided to, and stored by, the Customer, is the sole responsibility of the Customer. Websoft shall not be responsible for the theft, misappropriation, loss, or misuse of personal or entity related financial information, utility billing records, or any other financial information stored in Customer controlled electronic media or physical storage locations. Customer acknowledges that Customer is solely responsible for the Customer's security procedures, including but not limited to password security, encryption of sensitive information, proper handling of payroll

ACH files, physical custody of cash, internal audit procedures and processes, annual reporting, and proper training in security and backup procedures. In addition, the Customer and its related entities and affiliates agree to indemnify and hold harmless Websoft, its contractors and agents from all costs, damages, expense and attorney's fees incurred in the event of any security breach, theft, misappropriation, loss, misuse of personal or entity related financial information, or other related incident.

- (b) **Security Breaches.** Customer acknowledges that, notwithstanding the security features of the Cloud Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any electronic security measure. Subject only to its limited warranty obligations set forth in Section 14, Websoft will have no liability for any security breach caused by any such persons, entities, or technologies.
- (c) **Customer Data.** Customer shall be responsible for Customer Data as entered in to, applied or used in the Cloud Service. Customer is responsible for ensuring the accuracy, quality, integrity and legality of Customer Data. Customer grants to Websoft the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for Websoft : (i) to provide the Websoft Services; (ii) to verify Customer's compliance with the restrictions set forth in Section 3 (Restrictions on Use of the Cloud Service and Cloud Software) if Websoft has a reasonable belief of Customer's non-compliance; and (iii) as otherwise set forth in this Agreement, including the Websoft Privacy Policy. Websoft may utilize the information concerning Customer's use of the Cloud Service (excluding any use of Customer's personal data or Customer's Confidential Information) to improve the Cloud Service, to provide Customer with reports on its use of the Cloud Services, and to compile aggregate statistics and usage patterns by customers using the Cloud Services. Customer represents and warrants that it owns or has full and unrestricted rights and authority to effectuate the grants set forth in this Section and there are no third parties who may claim rights or interests in the Customer Data or otherwise hinder such grants.
- (d) **Use of Aggregate Data.** Customer agrees that Websoft may collect, use, and disclose quantitative data derived from the use of the Cloud Service for industry analysis, benchmarking, analytics, marketing, and other business purposes. All disclosed data will be in aggregate form only and will not identify Customer, its Authorized Users, or any third parties utilizing the Cloud Service.

## **12. Confidentiality.**

- (a) **Confidentiality Term.** The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this Agreement ("**Confidentiality Term**").
- (b) **Confidentiality Obligations.** During the Confidentiality Term and subject to the other terms of this Agreement (including Websoft's Privacy Policy, accessible at <https://sprbrk.box.com/v/websoft-privacy-policy>, which URL and its content may be updated from time to time by Websoft), Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its

employees, contractors or advisors on a need-to-know basis and who are bound by confidentiality and non-use restrictions at least as stringent as those contained herein. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner consistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

- (c) Legally Compelled Information. In the event the Recipient becomes legally compelled (by deposition, interrogatory, requests for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, or the Recipient determines that it is obligated by law, rule, statute or governmental regulation to disclose any of the Confidential Information, the Recipient shall provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party, if possible, may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the Recipient agrees to furnish only that portion of the Confidential Information that it is legally required to furnish and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. A Party's obligations hereunder with respect to legally compelled information shall continue to be applicable for all other purposes.
- (d) Publicity. During the term of this Agreement, including the term of any amendment hereto, Websoft may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Websoft Services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Websoft web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Websoft's products or services without Customer's prior written authorization.

### 13. Term and Termination.

- (a) Term. The term of this Agreement begins on the Effective Date and will remain in effect until all Cloud Service Subscriptions expire or until this Agreement is otherwise terminated in accordance with the terms hereof, whichever occurs first (the "Term"). Except as otherwise specified in the applicable Order Form, all Cloud Service Subscriptions will have an initial three (3) year term and then automatically renew for successive three (3) year terms unless otherwise stated in the applicable order form, provided that either party may terminate this Agreement effective upon the expiration of the Subscription Period, by notifying the other party in writing at least sixty (60) days prior to the expiration of the Subscription Period. Cancellation notices should be sent to [operations@sprbrk.com](mailto:operations@sprbrk.com). This Agreement may be renewed at any time by execution of an Order Form referencing this Agreement, and any such renewal will be deemed part of the "Term" hereunder. Subject to Section 8(b) (Payments), pricing increases will be effective upon renewal of the Subscription Period and annually thereafter.
- (b) Termination. Websoft or Customer may terminate the Agreement if the other party materially breaches a material provision thereof, including associated Order Form(s), and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Websoft may immediately terminate this Agreement and/or Customer's Cloud Service Subscription or license to the Cloud Software upon Customer's breach of Section 3 (Restrictions on Use of the Cloud Service and Cloud Software). Either Party may also terminate the Agreement upon written notice if the other party suspends payment of its debts or experiences any

other insolvency or bankruptcy-type event.

- (c) Effect of Termination. Upon expiration or termination of this Agreement for any reason, (i) Customer shall immediately pay any amounts then owing to Websoft; (ii) the right to access the Cloud Service or Cloud Software will end; and (iv) each Recipient will return or destroy, at the Disclosing Party's option, the Disclosing Party's Confidential Information in the Recipient's possession or control.
- (d) Other Termination. Websoft may terminate this Agreement in the event the Cloud Software or Cloud Service, as applicable, is phased out across Websoft's customer base. In such event, Websoft will provide Customer sufficient advance notice and the parties will mutually agree to a migration plan for converting Customer to another Websoft generally-available offering with comparable functionality.
- (e) Survival. All fees that have accrued as of such expiration or termination, and Sections 1, 5, 8, 9-12, 13(c), 14(d), 15, 16 and 17 will survive any expiration or termination hereof.

#### **14. Warranties.**

- (a) Mutual Warranties. Each Party represents and warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of the Agreement; (b) the Agreement does not conflict with any other agreement or arrangement to which a Party is bound, and (c) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement.
- (b) Limited Warranty. Subject to the limitations set forth below, Websoft warrants that during the Subscription Period, the Cloud Service will, in all material respects, operate in conformity with the then-current Cloud Specifications for the applicable Cloud Service version. Websoft's sole and exclusive obligation, and Customer's sole and exclusive remedy, for a breach of this warranty shall be that Websoft shall be required to use commercially reasonable efforts to modify the Cloud Service to conform in all material respects to the Specifications. Customer further acknowledges that the Cloud Service is not guaranteed to operate without interruptions, failures, or errors. Websoft will not be responsible to the extent failure of the Cloud Service to operate as warranted is caused by or results from: (i) any modification to the Cloud Service other than a Supported Modification; (ii) combination, operation or use of the Cloud Service with Customer's or Third Party Services, software or systems;
  - (iii) abuse, willful misconduct, or negligence by anyone other than Websoft or Websoft's designee;
  - (iv) installation, configuration and use of the Cloud Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and Documentation or (v) any of the Exclusions (as defined in the Cloud Service Level Commitment).
- (c) Subscription Service Level Commitment. During the Subscription Period, Websoft warrants that the Subscription Service will meet the performance level specified in Exhibit A, which sets forth Customer's sole and exclusive remedy for Websoft's failure to achieve the stated Cloud Service performance level.
- (d) Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 14, ALL WEBSOFT SERVICES ARE PROVIDED "AS IS" AND WEBSOFT AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE

WITH RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE ACCESS TO OR OPERATION OF THE WEBSOFT SERVICES. WEBSOFT EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE WEBSOFT SERVICES OR MAINTENANCE AND SUPPORT OR THAT THE WEBSOFT SERVICES WILL BE COMPATIBLE OR WORK WITH ANY CUSTOMER OR THIRD-PARTY SOFTWARE OR HARDWARE.

## 15. Mutual Indemnification.

- (a) Indemnification by Customer. Customer will defend (or settle), indemnify and hold harmless Websoft, its officers, directors, employees and subcontractors, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim: (i) that a third party has suffered injury, damage or loss resulting from Customer's or any Authorized User's use of the Software or Cloud Service, or (ii) arising from allegations that Customer has used the Software or Cloud Service in a manner that violates this Agreement or applicable law, or (iii) in connection with the nature and content of Customer Data processed by the Software or Cloud Service.
- (b) Indemnification by Websoft.
- (i) Intellectual Property Indemnification. Subject to the terms and conditions of this Section 15, Websoft will (a) defend at its expense any filed lawsuit (a "Claim") brought against Customer by a third party (the "Claimant") to the extent such Claim alleges that the Cloud Service or Cloud Software provided by Websoft to Customer hereunder violates or infringes the Claimant's patents, trademarks or copyrights or misappropriates the Claimant's trade secrets (collectively, "IP Rights"), and (b) either (i) indemnify Customer with respect to any final, non-appealable judgments, costs, fines or penalties awarded, entered or assessed against Customer by a court of competent jurisdiction that directly result from a Claim, or (ii) pay the value of any settlement with the Claimant agreed to by Websoft.
- (ii) Websoft Options. If a temporary or permanent injunction is obtained against the use of any part of the Cloud Service or Cloud Software for the reason that they infringe or misappropriate any third party's IP Rights or there is a reasonable likelihood of such an injunction, Websoft may at its option (a) modify the Cloud Service or Cloud Software to avoid the allegation of infringement, (b) obtain for Customer the right to continue using the Cloud Service or Cloud Software, or (c) replace the allegedly infringing Cloud Service or Cloud Software with non-infringing and functionally equivalent technology. In the event that none of the foregoing is commercially reasonable, Websoft may terminate Customer's right to use the allegedly infringing portion of the Cloud Service or Cloud Software.
- (iii) Exclusions. Websoft will not be liable or have any obligations hereunder for any infringement of IP Rights resulting from (a) the combination, utilization or integration of the Cloud Service or Cloud Software with Customer's or any third party's products or technology, (b) compliance with Customer's designs, specifications or instructions; (c) unauthorized modification of the Cloud Service or Cloud Software by any entity other than Websoft, (d) use of the Cloud Service or Cloud Software other than as specified in Websoft's published specifications and documentation, (e) Customer's failure to incorporate updates or upgrades that would have avoided the alleged infringement; or (f) Customer's breach of the Agreement.

(iv) THIS SECTION 15 STATES THE ENTIRE OBLIGATION OF WEBSOFT, ITS AFFILIATES AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF IP RIGHTS BY THE CLOUD SOFTWARE, CLOUD SERVICE OR ANY OTHER WEBSOFT SERVICES.

- (c) Indemnification Requirements. In connection with any claim for indemnification under this Section 15, the indemnified party must: (i) provide the indemnifying party prompt written notice of such claim; (ii) reasonably cooperate with the indemnifying party, at indemnified party's expense, in defense and settlement of such claim; (iii) give sole authority to the indemnifying party to defend or settle such claim; and (iv) make no admission of liability with respect to the claim. The indemnified party may, at its sole expense, actively participate in any suit or proceeding, through its own counsel.

## 16. Limitation of Liability.

- (a) Waiver of Consequential Damages. Neither Websoft nor any other person or entity involved in creating, producing, or delivering the Websoft Services will be liable for any indirect, incidental, special, punitive, exemplary or consequential damages, including lost profits, loss of data or loss of goodwill, loss of revenue, service interruption, computer damage or system failure or the cost of substitute products or services, or other commercial or economic loss of any kind whatsoever, or any liability of Customer to a third party, arising out of or in connection with this Agreement or from the use of or inability to use the Websoft Services, whether based on warranty, contract, tort (including negligence), product liability or any other legal theory, even if Websoft was advised of the possibility of such damages. Some jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to Customer.
- (b) Maximum Liability. In no event will Websoft's aggregate liability hereunder to Customer or any third party arising out of or in connection with this Agreement or from the use of or inability to use the Websoft Services, whether in contract, tort or under any other theory of liability, exceed the total amount paid by Customer in the twelve (12) month period preceding the incident. These limitations shall apply notwithstanding any failure of essential purpose of any remedy.
- (c) If Customer or Authorized Users use the Cloud Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Websoft and hold it harmless against those risks.

## 17. Other Terms and Conditions.

- (a) Dispute Resolution. This Agreement is governed by the laws of the State of Utah without regard for its conflict of laws principles. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The number of arbitrators shall be one (1) unless the Parties mutually agree otherwise. The place of arbitration will be American Fork, Utah. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any remedy hereunder, seek from any court having

jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs.

- (b) Other Agencies. Each Party understands and agrees that this Agreement may be used by other governmental agencies under substantially the same terms and conditions, excluding pricing, duration, scope of services to be provided, and other terms unique to the Customer. Each governmental agency desiring to accept this Agreement, and make an award thereof, shall do so independently of the Customer and/or any other governmental agency. Each governmental agency shall be responsible for its own purchases, and each shall be liable only for materials and/or services ordered and received by it, and no governmental agency, other than Customer, assumes any liability by virtue of this Agreement. This Agreement in no way restricts or interferes with the right of the Customer or any governmental agency to competitively procure any or all items. The foregoing does not authorize either Party to disclose Confidential Information of the other Party.
- (c) Equitable Relief. The Recipient acknowledges that unauthorized disclosure of the Disclosing Party's Confidential Information or misappropriation or infringement of a Party's Intellectual Property Rights could cause substantial harm to the Disclosing Party or owner of such Intellectual Property Rights for which damages alone might not be a sufficient remedy and, therefore, that upon any such disclosure, misappropriation or infringement, the injured Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or equity.
- (d) Assignment. Websoft may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving merger, acquisition, or the sale of all or substantially all of its stock or assets. Assignment by a Customer of its rights and obligations hereunder requires the advance written consent of Websoft. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- (e) Entire Agreement. This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements of the Parties with respect to the transactions set forth herein.
- (f) Severability and Amendment. If any particular provision of this Agreement is determined to be invalid or unenforceable, that determination will not affect the other provisions of this Agreement, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this Agreement will be effective unless it is described in writing and signed by all Parties.
- (g) Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the third business day after mailing by first class mail, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Websoft Services (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 17).
- (h) Compliance with Laws. Each party will comply with all applicable laws and regulations with respect



to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, Customer will not permit Authorized Users to access or use the Cloud Service or Cloud Software in violation of any U.S. export embargo, prohibition or restriction. Further, in connection with the services performed under this Agreement and Customer's use of the Cloud Services or Cloud Software, the Parties agree to comply with all applicable anti-corruption and anti-bribery laws, statutes, and regulations.

- (i) Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties.
- (j) Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- (k) Force Majeure. Websoft will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of Websoft.

*Exhibits Follow*



**EXHIBIT A  
MAINTENANCE AND SUPPORT  
AVAILABILITY**

This Exhibit A is part of the Websoft Cloud Service Master Agreement Terms and Conditions. It may be updated from time to time by Websoft in its sole discretion.

**I. SUPPORT POLICY**

**Updates**

Updates may address security fixes, critical patches, general maintenance functionality, and documentation and shall be made available at Websoft's discretion. Websoft is under no obligation to develop any future functionality or enhancements unless otherwise specified in the Agreement. If an update for the Cloud Service is made available to Customer pursuant to this Support Policy, it will automatically replace the previous version of the applicable Cloud Service.

**Support Commitment**

In support of the Cloud Service, Websoft will provide Customer with the following first line support: Telephone Support. Websoft's Customer Resource Center (CRC), a live technical support facility, will be available to Customer from 5:00 a.m. until 5:00 p.m. Pacific time Monday through Friday, excluding Websoft's observed holidays.

Email Support. Websoft provides an electronic mail address ([help@sprbrk.com](mailto:help@sprbrk.com)) to which Customer may submit routine or non-critical support requests. Email Support Requests will be addressed by Websoft during its regular business hours of 5:00 a.m. until 5:00 p.m. Pacific time Monday through Friday.

Online Support Materials. Websoft will make available to Customer certain archived client-side software updates and other technical information in Websoft's online support databases. This Online Support will be continuously available to Customers.

**Upgrade/Downgrade of Severity Level**

If, during the Support Request process, the issue either warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production database, then the severity level will be upgraded or downgraded accordingly to the severity level that most appropriately reflects its current impact.

**Third Party Product Support**

If any third-party software is supplied by Websoft, Websoft disclaims all support obligations for such third-party software, unless expressly specified by Websoft in Customer's Agreement.



## Exclusions

The following Support Exclusions are not covered by this Support Policy: (a) Support required due to Customer's or any End User's or third party's misuse of the Services; (b) Support during times outside of Websoft's regular business hours stated above; (c) Support necessitated by external factors outside of Websoft's reasonable control, including any force majeure event or Internet access or related problems.

## Response and Resolution Goals

Websoft will respond to Customer's Support Requests in a manner appropriate for the severity of the reported issue and will use good faith efforts to achieve the goals listed below.

### A. Critical Severity Level

Definition. System or application is non-functional or seriously affected and there is no reasonable workaround available (e.g., business is halted).

Response goal. Confirmation of receipt within 1 business hour. Update as information arrives or at the interval agreed with the Customer.

Resolution goal. Upon confirmation of receipt, Websoft begins continuous work on the case. Websoft will put forth the effort to provide a workaround, fix, or estimated completion date within 72 hours after the problem has been diagnosed and/or replicated, provided there is an agency representative available to assist with issue diagnosis and testing during the resolution process.

### B. High Severity Level

Definition. System or application is affected and there is no workaround available, or the workaround is impractical (e.g., system response is very slow, day to day operations continue but are impacted by the work around).

Response goal. Confirmation of receipt within 4 business hours.

Resolution goal. Websoft will put forth the effort to provide a workaround or fix or estimated completion date within 14 business days after the problem has been diagnosed and/or replicated.

### C. Medium Severity Level

Definition. System or application feature is non-functional, and a convenient workaround exists (e.g., non-critical feature is unavailable or requires additional user intervention).

Response goal. Confirmation of receipt within 8 business hours.

Resolution goal. Websoft will put forth the effort to provide a workaround or fix or estimated completion date within 21 business days after the problem has been diagnosed and/or replicated.

#### D. Low Severity Level

Definition. System or application feature works, but there is a minor problem (e.g., incorrect label, or cosmetic defect).

Response goal. Confirmation of receipt within 24 business hours

Resolution goal. Resolution for the issue may be released as a patch set or be incorporated into a future release of the product.

## II. AVAILABILITY

### Service Availability:

Websoft will use commercially reasonable efforts to (a) provide bandwidth sufficient for Customer's use of the Cloud Service provided hereunder and in an applicable Order Form and (b) operate and manage the Cloud Service with a ninety-nine and one-half percent (99.5%) uptime goal (the "**Availability SLA**"), excluding situations identified as "Exclusions" below.

"Exclusions" means any outage that results from any of the following:

- (a) Any maintenance performed by Websoft during Websoft's standard maintenance windows. Websoft will notify Customer within forty-eight (48) hours of any standard maintenance and within twenty-four (24) hours for other non-standard emergency maintenance (collectively referred to herein as "**Scheduled Maintenance**").
- (b) Customer's information content or application programming, or the acts or omissions of Customer or its agents, including, without limitation, the following:
  1. Customer's failure to provide Websoft with reasonable advance prior notice of any pending unusual large deployments of new nodes (e.g., adding over ten (10) percent total nodes in less than twenty-four (24) hours);
  2. Customer's implementation of any significant configuration changes, including changes that lead to a greater than thirty percent (30%) change in a one week period or greater than fifty percent (50%) change in a one month period in the number of key objects in the system including but not limited to metrics, snapshots, nodes, events and business transactions;
  3. Any misconfiguration by Customer (as determined in Websoft's sole discretion), including, without limitation, configuration errors and bad or unintended usage of the Cloud Service; and
  4. Force majeure or other circumstances beyond Websoft's reasonable control that could not be avoided by its exercise of due care.
- (c) Failures of the Internet backbone, telecommunications systems, ISP failures, or the network by which Customer connects to the Internet backbone or any other network unavailability.
- (d) Any window of time when Customer agrees that Cloud Service availability/unavailability will not be monitored or counted.
- (e) Any problems resulting from Customer combining or merging the Cloud Service with any hardware or software not supplied by Websoft or not identified by Websoft in the Specifications as being compatible with the Cloud Service.



- (f) Interruptions or delays in providing the Cloud Service resulting from telecommunication or Internet service provider failures. Customer's or any third party's use of the Cloud Service in an unauthorized or unlawful manner.

**Remedies for Excessive Downtime:**

In the event the Availability of the Cloud Service falls below the Availability SLA in a given calendar month, Websoft will pay Customer a service credit (“**Service Credit**”) equal to the percentage of the fees set forth in the table below corresponding to the actual Availability of the Cloud Service during the applicable calendar month. Websoft will apply any Service Credits only against future Cloud Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from Websoft. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in this Agreement, Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by Websoft to provide the Cloud Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this Exhibit A.

System availability is measured by the following formula:  $x = (n - y) * 100 / n$

**Notes:**

- (1) "x" is the uptime percentage; "n" is the total number of hours in the given calendar month minus Exclusions; and "y" is the total number of downtime hours in the given calendar month not caused by an Exclusion.

<b>Service Availability</b>	<b>Percentage of Monthly Service Fees Credited</b>
>99.5%	0%
95.0% - < 99.5%	5% (max of \$280)
90.0% - < 95.0%	10% (max of \$560)
80.0% - < 90.0%	20% (max \$840)
70.0% - < 80.0%	30% (max of \$1,120)
60.0% - < 70.0%	40% (max of \$1,400)
< 50%	50% (max of \$2,800)

**Customer Account Login:**

For Websoft user interface access, Websoft uses TLS 1.2 with AES 256 bit or similar encryption for protection of data in transit, which is supported by most modern browsers. Websoft will also restrict applicable administrative user interface access to Customer corporate networks for additional security on written request by Customer.

**Hosting:**

Websoft's SaaS platform (servers, infrastructure, and storage) for the Cloud Service is and will remain hosted in one of the largest data centers in North America, specifically designed and constructed to deliver world-class physical security, power availability, infrastructure flexibility and growth capacity. Websoft's data center provider is and will remain SSAE 18 SOC2 compliant, meaning it has been fully independently audited to verify the validity and functionality of its control activities and processes. Every Server for the Services is and will remain operated in a fully redundant fail-over pair to ensure high availability. Data is and will remain backed up nightly, stored redundantly and will be restored rapidly in case of failure.

Security Patching and updates are actively evaluated by engineers and will be deployed based upon



the impact and risk and stability benefits they offer to Websoft's SaaS platform and Customers.

Websoft will attempt to provide customers reasonable prior notice to security changes, updates, and patches, unless the delay will lead to a significant risk of impact to customer data.

**Fees:**

Maintenance and Support Services, as described herein, are included in the Cloud Service Subscription for no additional fees, except as follows:

Websoft will bill Customer on an hourly basis for the following services that are beyond the scope of standard Maintenance and Support Services;

- (a) Maintenance or Support in cases where repeated operator-produced error by the same user continues to occur despite notification to Customer;
- (b) Maintenance and Support associated with applications not purchased by Customer from Websoft, as documented in an appropriate Order Form or Statement of Work;
- (c) Maintenance and Support outside the scope of this Agreement;
- (d) Maintenance and Support necessitated by Customer's failure to provide adequate internal controls to ensure the accuracy and appropriate use of the Cloud Software or Cloud Service and compliance with local, state and federal regulations and auditors requirements;
- (e) Costs associated with Customer's creation or modification of data in Websoft's database except through the appropriate use of the Cloud Software or Cloud Service;
- (f) Costs associated with Customer's own actions to integrate the Cloud Software or Cloud Service with applications or services not purchased from Websoft;
- (g) Costs associated with Customer's failure to meet the terms and conditions of this Agreement;
- (h) Costs associated with additional labor or out of pocket expenses incurred while providing support to Customer in cases where Websoft has requested but Customer has denied remote access into a user workstation or the server housing the Cloud Software; and
- (i) Labor and travel costs associated with providing on-site for services covered by this Agreement.



**WEBSOFT DEVELOPERS, INC**  
**PROFESSIONAL SERVICES AGREEMENT**  
**TERMS AND CONDITIONS**

These Terms and Conditions, together with each Order Form entered into by the Parties that references such Terms and Conditions, constitute a binding agreement (“**Agreement**”) by and between Websoft Developers, Inc. (“**Websoft**”) and the Customer identified on the Order Form (“**Customer**”). These Terms and Conditions become effective as of the date of the related Order Form. Each of Websoft and Customer is referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

The Agreement governs the provision by Websoft, and the receipt by Customer, of the Professional Services (defined below) that Websoft provides to Customer.

**1. SCOPE OF SERVICES.**

- (a) Subject to compliance with the terms and conditions of the Agreement, Websoft will provide Customer with certain skilled services, such as software implementation, configuration, conversion, customization, upgrade, data extraction, diagnostic, training and/or other services (collectively “**Professional Services**”) as specified in the applicable order form executed by Websoft and Customer (each an “**Order Form**”). Any such Order Form must reference these Terms and Conditions.
- (b) Each Order Form, or will include, at a minimum: (i) a description of the Professional Services and any deliverables and/or materials to be provided to Customer (each, a “**Deliverable**”); (ii) applicable fees and payment terms for such Professional Services, if not elsewhere specified, and (iii) other details regarding the Professional Services. All Order Forms will be subject to these Terms and Conditions.
- (c) For certain types of Professional Services, Websoft will prepare and make available to Customer a scope of work or cloud migration project packet before commencing such services.
- (d) Customer acknowledges that data conversion services are limited to three (3) years of data.

**2. CHANGE ORDERS.**

If the Customer or Websoft requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Order Form, the Party seeking the change will propose the applicable changes by written notice.

Within a reasonable amount of time (not to exceed four (4) business days in the case of implementation services) after receipt of written notice, each Party’s designated personnel will meet, either in person or via telephone conference, to discuss and agree upon any proposed changes. Thereafter, Websoft will prepare a change order describing the proposed changes and any associated changes in the Deliverables, Deliverable schedule, fees and/or expenses, or other aspects of the change (each, a “**Change Order**”).



Change Orders will not be binding until they are executed by both parties. Executed Change Orders will be deemed part of, and subject to, the Agreement. If the parties disagree about the proposed changes, they will promptly escalate the change request to their respective senior management for resolution.

In the event the Customer requires significant changes (either individually or cumulatively across Change Order(s)) which Websoft reasonably determines are (i) a material modification of the nature or scope of Professional Services being purchased and/or (ii) significantly outside any Supported Configuration (as defined below), Websoft may, upon no less than thirty (30) days' notice to the Customer, suspend or terminate the applicable Order Form and/or Change Order(s). In the event of any such termination or suspension, the parties will work together in finalizing agreed-upon Deliverables. Unless otherwise expressly agreed to by the Parties at the time of any such material change, Websoft will not be deemed to have waived any of the Customer's payment obligations in respect of completed Deliverables. A "Supported Configuration" means a software configuration that can be consistently supported by Websoft via APIs, does not require direct database changes and is capable of being tested and maintained by Websoft.

### 3. ACCEPTANCE.

- (a) Acceptance. Unless indicated to the contrary in the Order Form, the Professional Services and accompanying Deliverables will be deemed accepted upon delivery.
- (b) Review. Review and testing of Deliverables, if so indicated in the Order Form, shall be conducted pursuant to the acceptance criteria or test plans mutually agreed upon in writing by the Parties and shall take place within the mutually agreed timeframes established in the project plan or schedule. Absent mutual agreement to the contrary, Customer will provide Websoft with written notification of acceptance or rejection for each Deliverable within five (5) business days of delivery (the "Acceptance Period"). Failure to reject a Deliverable within the Acceptance Period will be deemed acceptance. If Customer, in its reasonable and good faith judgment, determines that any submitted Deliverable does not satisfy mutually agreed-upon acceptance criteria, Customer must so notify Websoft in writing before the end of the Acceptance Period, specifying the deficiencies in detail. Websoft will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to Customer as soon as practicable.

### 4. OWNERSHIP RIGHTS AND LICENSES.

- (a) License for Deliverables. Subject to these Terms and Conditions and upon payment of fees due under an applicable Order Form, Websoft grants Customer a limited, non-exclusive, worldwide, nontransferable, terminable license to use the Deliverables solely for Customer's internal operations in connection with authorized use of the applicable Websoft services. Notwithstanding any other provision of these terms and conditions, nothing herein is intended to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques, and expertise ("Tools") used by Websoft to develop the Deliverables and/or provide the Professional Services.
- (b) Proprietary Rights. As between the parties, Websoft shall solely and exclusively own all right, title, and interest in the Professional Services, Deliverables, and any software provided by Websoft, including all modifications, enhancements, and derivative works thereof and any other of



Websoft's products or services, whether created by Websoft or Customer, together with all intellectual property and other proprietary rights therein. Customer hereby makes all assignments necessary to accomplish the foregoing ownership. None of the Professional Services or Deliverables will be deemed to constitute work product or work-for-hire inuring to the benefit of Customer.

- (c) No Reverse Engineering. Deliverables constitute Websoft Confidential Information and Customer may not reverse engineer, decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license or grant any interest in the Deliverables to any party except as expressly permitted by Websoft.
- (d) Conflicting Language. In the event any language conflicting with this Section 4 is added to any Order Form or Change Order, the parties expressly agree that such statement will have no effect on Websoft's rights as set out herein.

## 5. COOPERATION.

- (a) Customer Cooperation. Websoft's ability to successfully perform the Professional Services is dependent upon Customer's reasonable and good faith cooperation by, without limitation:
  - (i) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Websoft to perform its obligations under each Order Form; (ii) timely delivering any materials and other obligations required under each Order Form; (iii) providing Websoft with access to Customer's sites and facilities during Customer's normal business hours and as otherwise reasonably required by Websoft to perform the Professional Services; (iv) timely responding to Websoft's inquiries related to the Professional Services; (v) assigning a project manager as a primary point of contact for Websoft; (vi) actively participating in scheduled project meetings; and (vii) providing, in a timely manner and at no charge to Websoft, office workspace, telephone and other facilities, suitably configured computer equipment, access to Customer's appropriate and knowledgeable employees and continuous administrative access to Customer's accounts, and coordination of onsite and telephonic meetings all as reasonably required by Websoft.
- (b) Customer Delays. Delays in Websoft's provision of the Professional Services caused by Customer (each, a "Delay"), during any implementation period may have adverse collateral effects on Websoft's overall work schedule. If Websoft's performance of any of its obligations in respect of the Professional Services is prevented or delayed by any act or omission by Customer, or failure by Customer to perform any of its obligations hereunder the Agreement, such as those identified in subsection (a) above:
  - Websoft shall, without limiting its other rights or remedies, have the right to suspend performance of the Professional Services and relieve it from the performance of any of its obligations until Customer remedies the Delay.
  - Although Websoft will use its commercially reasonable efforts to promptly resume work following a Delay, Customer acknowledges that schedules for the Professional Services may be delayed by more than the number of days delayed by Customer.

- Customer agrees that if additional time is required to complete the Professional Services as the result of Customer Delays, such time will be charged to Customer at Websoft's then-current time-and-materials rates.
- (c) **Customer Postponements.** If Customer wishes to postpone or fails to be available for a scheduled meeting, training session or other activity, it shall provide Websoft with no less than two (2) business days' written notice of such postponement or non-availability. If Customer fails to provide such notice in the required time period, Websoft's shall invoice the Customer for lost or delayed scheduled time, with a minimum charge of two (2) hours. Additional charges may apply based on the resources and preparation required for the meeting. Such liability will be in addition to the charge for the services at the time they are performed.

## 6. PAYMENT TERMS.

- (a) **Invoicing and Payment.** Customer will be invoiced for the amounts and at the times set forth in the Order Form. Professional Services fees are due and payable within thirty (30) days of the invoice date.
- (b) **Billing Info & Overdue Charges.** Customer is responsible for keeping Websoft accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. If any Professional Service fees are not received from Customer by the due date, they will accrue interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.
- (c) **Overdue Payments.** If any amount owing by Customer hereunder for any of the Professional Services is thirty (30) or more days overdue, Websoft may, without limiting its other rights and remedies, accelerate Customer's other unpaid fee obligations, if any, hereunder (including any Order Form) so that all such obligations become immediately due and payable, suspend the Professional Services and/or stop performance of the Professional Services until such amounts are paid in full.
- (d) **Taxes.** Professional Services fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes. If Websoft has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Websoft with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, Websoft is solely responsible for taxes assessable against it based on Websoft's income, property, and employees.

## 7. WARRANTY.



Websoft warrants that the Professional Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner, consistent with the practices and standards of care generally accepted within and expected of Websoft's industry. For any breach of the above warranty, Customer's sole remedy will be the re-performance of the applicable Professional Services by Websoft. This warranty will be in effect for a period of ninety (90) days from acceptance of any Professional Services.

## 8. DISCLAIMER.

Section 7 sets forth the sole and exclusive warranties and remedies related to the Professional Services, Deliverables and Tools performed or provided hereunder. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN, WEBSOFT DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WEBSOFT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. EXCEPT AS PROVIDED HEREIN, THE PROFESSIONAL SERVICES AND DELIVERABLES PROVIDED TO CUSTOMER ARE ON AN "AS IS" AND "AS AVAILABLE" BASIS.

## 9. TERM AND TERMINATION.

- (a) Term. The Agreement commences on the date of last signature on the first Order Form issued hereunder ("**Effective Date**") and will remain in effect until terminated in accordance with this section (the "**Term**"). Each Order Form will commence on the date it is last signed and will expire upon completion of the project set forth in the applicable Order Form.
- (b) Cancellation. Once signed by both parties, an Order Form will be non-cancellable, except as otherwise explicitly stated in such Order Form.
- (c) Termination. This Agreement will terminate automatically when any agreement for Cloud Services to which this Agreement is related and/or all Order Forms referencing this Agreement are terminated or expired. Either Party may terminate this Agreement for cause: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- (d) Effect of Termination. For the avoidance of doubt, termination under any of the foregoing subsections will not affect Customer's outstanding payment obligations to Websoft in respect of Professional Services and Deliverables provided prior to such termination. Upon any termination of this Agreement, Customer will have no rights to continue receipt of any on-going or additional Professional Services, whether or not such Professional Services are completed prior to such termination.
- (e) Survival. All fees that have accrued as of such expiration or termination, and Sections 1, 5, 8, 9-12, 13(c), 14(d), 15, 16 and 17 will survive any expiration or termination hereof.

## 10. CONFIDENTIALITY.

- (a) Confidentiality Term. The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this Agreement (“**Confidentiality Term**”).
- (b) Definitions. “**Disclosing Party**” and “**Recipient**” refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. “**Confidential Information**” means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as “Confidential” or “Proprietary” will be deemed and treated as Confidential Information, as will information that would reasonably be considered to be confidential given its nature and the circumstances under which it is disclosed. Information which qualifies as Confidential Information may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information.
- (c) Confidentiality Obligations. During the Confidentiality Term (as defined below) and subject to the other terms of this Agreement (including Websoft’s Privacy Policy, accessible at <https://sprbrk.box.com/v/sprbrk-privacy-policy>, which URL and its content may be updated from time to time by Websoft), Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party’s advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees, contractors, or advisors on a need-to-know basis and who are bound by confidentiality and non-use restrictions at least as stringent as those contained herein. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner consistent with applicable laws, to protect the Confidential Information to the fullest extent possible.
- (d) Legally Compelled Information. In the event the Recipient becomes legally compelled (by deposition, interrogatory, requests for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, or the Recipient determines that it is obligated by law, rule, statute or governmental regulation to disclose any of the Confidential Information, the Recipient shall provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party, if possible, may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the Recipient agrees to furnish only that portion of the Confidential Information that it is legally required to furnish and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such



Confidential Information. A Party's obligations hereunder with respect to legally compelled information shall continue to be applicable for all other purposes.

- (e) Publicity. During the Term of this Agreement, including the term of any amendment hereto, Websoft may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Websoft Services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Websoft web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Websoft's products or services without Customer's prior written authorization.
- (f) Customer's Confidential Information. Websoft will have the right to use any Customer Confidential Information solely for providing the Professional Services to Customer hereunder. Notwithstanding the foregoing, Websoft may use aggregate Customer Confidential Information for Websoft development, internal training, and other reasonable business purposes not specific to Customer or its End Users.

## 11. LIMITATION OF LIABILITY.

- (a) Waiver of Consequential Damages. Neither Websoft nor any other person or entity involved in creating, producing, or delivering the Professional Services, including any Deliverables, will be liable for any indirect, incidental, special, punitive, exemplary or consequential damages, including lost profits, loss of data or loss of goodwill, loss of revenue, service interruption, computer damage or system failure or the cost of substitute products or services, or other commercial or economic loss of any kind whatsoever, or any liability of Customer to a third party, arising out of or in connection with this Agreement or from the use of or inability to use the Professional Services, whether based on warranty, contract, tort (including negligence), product liability or any other legal theory, even if Websoft was advised of the possibility of such damages. Some jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to Customer.
- (b) In no event will Websoft's aggregate liability hereunder to Customer or any third party arising out of or in connection with this Agreement or from the use of or inability to use the Professional Services, whether in contract, tort or under any other theory of liability, exceed the total amount paid by Customer in the twelve (12) month period preceding the incident. These limitations shall apply notwithstanding any failure of essential purpose of any remedy.

## 12. GENERAL.

- (a) Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder must be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the third business day after mailing by first class mail, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Professional Services (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 12(a)). Customer's email address for communication and notice purposes relating to this



Agreement will be set forth on the Order Form (or subsequent email addresses as advised by Customer). Customer agrees to accept emails from Websoft at the e-mail address specified in the Order Form.

- (b) Compliance with Laws. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, the export laws and regulations of the United States and other applicable jurisdictions.
  
- (c) Relationship of Parties. Websoft's relationship with Customer pursuant to this Agreement will be that of an independent contractor. Neither party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other. Nothing in this Agreement will be deemed to create any agency, partnership, or joint venture relationship between the parties.
  
- (d) Use of Contractors. Websoft reserves the right to use third parties (who are under a covenant of confidentiality with Websoft), including, but not limited to, offshore subcontractors to assist with the Professional Services, including, without limitation, any data migration, configuration, implementation, and custom code development processes.
  
- (e) Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
  
- (f) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.
  
- (g) Assignment. Customer may not assign or transfer this Agreement or any Order Form hereunder, whether by operation of law or otherwise, without the prior written consent of Websoft. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
  
- (h) Force Majeure. Websoft will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of Websoft.
  
- (i) Dispute Resolution This Agreement is governed by the laws of the State of Utah without regard for its conflict of laws principles. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The number of arbitrators shall be one (1) unless the Parties mutually agree otherwise. The place of arbitration will be the State of Utah. Either party may



apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any remedy hereunder, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs.

- (j) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties concerning its subject matter and supersedes all prior communications, agreements, proposals, or representations, written or oral, concerning its subject matter. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in any master agreement to which this Agreement is incorporated, any Customer Order Form or other order documentation, will be incorporated into or form any part of this Agreement unless expressly agreed to by both parties in a mutually signed writing, and all such terms or conditions will be null. Under no circumstances will the terms, conditions or provisions of any RFP, purchase order, invoice or administrative document issued by Customer in connection with this Agreement be deemed to modify, alter, or expand this Agreement, regardless of any failure of Websoft to object to such terms, provisions, or conditions. No other act, document, usage, custom or waiver will be deemed to amend or modify this Agreement unless agreed to in writing signed by a duly authorized representative of both parties.



# EXHIBIT C

**NOTE: The City of Lodi is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s) to submit the required insurance documentation electronically**

## Insurance Requirements for IT Vendor Services

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto or if Contractor has no owned autos, then hired, and non-owned autos with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Cyber Liability Insurance,** with limits not less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

### **Other Insurance Provisions:**

- (a) **Additional Named Insured Status**  
The City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers are to be covered as additional insureds on the CGL and auto policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used
- (b) **Primary and Non-Contributory Insurance Endorsement**  
The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage **at least as broad** as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (c) **Waiver of Subrogation** Contractor hereby grants to City of Lodi a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Lodi by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Lodi has received a waiver of subrogation endorsement from the insurer

**NOTE:** (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) and (c) above: 221 West Pine Street, Lodi, California, 95240; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

- (d) **Severability of Interest Clause**  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability under the Contractors commercial general liability and automobile liability policies.

- (e) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.
- (f) Continuity of Coverage  
All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Contractor shall provide proof of continuing insurance on at least an annual basis during the Term. If Contractor's insurance lapses or is discontinued for any reason, Contractor shall immediately notify the City and immediately obtain replacement insurance. Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).
- (g) Failure to Comply  
If Contractor fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Contractor shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Contractor of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Contractor shall pay such reimbursement and interest on the first (1st) day of the month following the City's notice. Notwithstanding any other provision of this Agreement, if Contractor fails or refuses to obtain or maintain insurance as required by this agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Contractor shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.
- (h) Verification of Coverage  
Consultant shall furnish the City with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. **Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.**
- (i) Self-Insured Retentions  
Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- (j) Insurance Limits  
The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors. Contractor's obligation to defend, indemnify and hold the City and its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Contractor to procure and maintain a policy of insurance.
- (k) Subcontractors  
Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors
- (l) Claims Made Policies  
If any of the required policies provide coverage on a claims-made basis:  
1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.  
2. Insurance must be maintained and evidence of insurance must be provided for **at least five (5) years** after completion of the contract of work.  
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- (m) Qualified Insurer(s)  
All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.