

EMPYRA MASTER SOFTWARE AS A SERVICE AGREEMENT

This agreement ("Agreement") is entered into, to be effective as of [February 1, 2024] ("Effective Date"), by and between **[City of San Antonio]** located at [100 W. Houston St., San Antonio, TX 78205] ("Subscriber") and **Empyra.com, Inc.** located at 7510 Market Street, Suite 8, Boardman OH 44512 ("Service Provider").

RECITALS

WHEREAS, Subscriber requires third-party hosted "software as a service" (the "Services," as further described herein) with respect to certain of its information technology needs;

WHEREAS, Subscriber requested a proposal from Service Provider for such Services;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, Service Provider submitted a proposal to Subscriber to perform such Services on behalf of Subscriber;

WHEREAS, Subscriber has selected Service Provider to provide and manage the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and the security and availability of Subscriber's data ("Subscriber Data," as further described herein) are critical to the operation of Subscriber's business; and,

WHEREAS, Service Provider has agreed to provide the Services to Subscriber, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services. This Agreement sets forth the terms and conditions under which Service Provider agrees to license to Subscriber certain hosted software and provide all other services necessary for productive use of such software including customization / integration, user identification and password change management, data import / export, monitoring, technical support, maintenance, training, backup and recovery, and change management (the "Services") as further set forth on an Exhibit A (sequentially numbered) in the form of the Exhibit A attached hereto or in other statements of services containing substantially similar information and identified as an Exhibit A. The Agreement shall remain in effect unless terminated as provided for herein.
 - 1.1 Authorized Users; Authorized Uses. Unless otherwise limited on an Exhibit A, Service Provider grants Subscriber a renewable, irrevocable (unless as provided for herein), nonexclusive, royalty-free, and worldwide right for any Subscriber employee, contractor, or agent, or any other individual or entity authorized by Subscriber, (each, an "Authorized User") to access and use the Services. Other than those limitations expressly described in an Exhibit A, Authorized Users will have no other limitations on their access or use of the Services.
 - 1.2 Acknowledgement of License Grant. For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this Agreement constitutes a license grant of intellectual property in software form to Subscriber by Service Provider.
 - 1.3 Changes in Number of Authorized Users. The Services are provided on a per user or tiered basis, such tiers as further described in an Exhibit A. Subscriber agrees to license the initial number of Authorized Users described in such Exhibit A (the "Minimum Commitment"). Subscriber is entitled to increase or decrease the number of Authorized Users on an as-requested basis; provided, however, that Subscriber shall maintain the Minimum Commitment unless the parties otherwise

agree to adjust the Minimum Commitment. Should Subscriber elect to change the number of Authorized Users, Service Provider shall reduce or increase Authorized Users to the corresponding tier described in the Exhibit A and adjust the prospective Services Fees accordingly no later than five (5) business days from Subscriber's written request.

- 1.4 **Control and Location of Services.** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of Subscriber. Except as otherwise specified in an Exhibit A, the Services (including data storage), shall be provided solely from within the continental United States and on computing infrastructure located in the continental United States.
- 1.5 **Development and Test Environments.** In addition to production use of the Services, Subscriber is entitled to two pilot/test site environment for use by Authorized Users at no additional charge. Such non-production environment may have reduced data storage and processing capacities than the production environment. Service Provider shall cooperate with Subscriber's requests in managing the non-production environments such as refreshing Subscriber Data upon request.
- 1.6 **Documentation.** The documentation for the Services (the "Documentation") will accurately and completely describe the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services. Subscriber shall have the right to make any number of additional copies of the Documentation at no additional charge.
- 1.7 **Changes in Functionality.** During the term of an Exhibit A, Service Provider shall not reduce or eliminate functionality in the Services. Where Service Provider has reduced or eliminated functionality in the Services, Subscriber, at Subscriber's sole election and in Subscriber's sole determination, shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement or the Exhibit A and be entitled to a return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Service Provider will immediately adjust the Services Fees accordingly on a prospective basis.

2. Support; Maintenance; Additional Services.

- 2.1 **Technical Support.** Service Provider shall provide the Technical Support described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Technical Support.
- 2.2 **Maintenance.** Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Exhibit A and the Documentation; (c) the Service Level Standards can be achieved; and, (d) the Services work with the then-current version and the prior version of Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance.
 - 2.2.1 **Required Notice of Maintenance.** Unless as otherwise agreed to by Subscriber on a case-by-case basis, Service Provider shall provide no less than seven (7) calendar day's prior written notice to Subscriber of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed. For emergency maintenance, Service Provider shall provide as much prior notice as commercially practicable to Subscriber and shall provide a detailed description of all maintenance performed no greater than one (1) calendar day following the implementation of the emergency maintenance.

- 2.2.2 Acceptance of Non-Emergency Maintenance. Unless as otherwise agreed to by Subscriber on a case-by-case basis, for non-emergency maintenance, Subscriber shall have a ten (10) business day period to test any maintenance changes prior to Service Provider introducing such maintenance changes into production (the "Maintenance Acceptance Period"). At the end of the Maintenance Acceptance Period, Service Provider shall be entitled to introduce the maintenance changes into production.
- 2.3 Customization / Integration Services. Service Provider shall provide the Customization / Integration Services, if any, described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Customization / Integration Services.
- 2.4 Training Services. Service Provider shall provide the Training Services, if any, described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Training Services.
3. Change Control Procedure. Subscriber may, upon written notice, request changes to the scope of the Services under an Exhibit A. If Subscriber requests an increase in the scope, Subscriber shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify Subscriber whether or not the change has an associated cost impact. If Subscriber approves, Subscriber shall issue a change control, which will be executed by the Service Provider.
4. Term and Termination; Renewals.
- 4.1 Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement or an Exhibit A is terminated earlier in accordance with the terms set forth herein, the term of an Exhibit A (the "Initial Term") shall commence on the Start Date and continue on a year-to-year basis until the End Date for a three year period. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, an Exhibit A may be renewed for two additional, successive one (1) year terms (each, a "Renewal Term"). Any such termination shall be effective as of the date that would have been the first day of the next Renewal Term.
- 4.2 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement or an Exhibit A for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the nonbreaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, the nonbreaching party may terminate this Agreement or an Exhibit A for cause as of a date specified in such notice.
- 4.3 Payments upon Termination. Upon the termination of this Agreement or an Exhibit A, Subscriber shall pay to Service Provider all undisputed amounts due and payable hereunder, if any, and Service Provider shall pay to Subscriber all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.
- 4.4 Return of Subscriber Data. Upon the termination of this Agreement or an Exhibit A, Service Provider shall, within ten (10) business days following the termination of this Agreement or an Exhibit A, provide Subscriber, at no additional charge, with a final extract of the Subscriber Data. Further, Service Provider shall certify to Subscriber the destruction of any Subscriber Data within the possession or control of Service Provider but such destruction shall occur only after the Subscriber Data has been returned to Subscriber. This Section shall survive the termination of this Agreement.

5. Fees; Billing. Subscriber shall be responsible for and shall pay to Service Provider the fees as further described in an Exhibit A, subject to the terms and conditions contained in this Agreement and such Exhibit A. Any sum due Service Provider for the Services for which payment is not otherwise specified, but agreed upon in writing by Subscriber, shall be due and payable thirty (30) business days after receipt by Subscriber of an invoice from Service Provider.

5.1 Billing Procedures. Unless otherwise provided for under an Exhibit A, Service Provider shall bill to Subscriber the sums due pursuant to an Exhibit A by Service Provider's invoice, which shall contain: (a) Subscriber's purchase order number, if any, and Service Provider's invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d); taxes, if any; (e); any Performance Credits or other credits; and, (f) total amount due. Service Provider shall email all invoices to your Invoice/accounting contact.

5.2 Taxes. Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Service Provider agrees that Subscriber is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.

5.3 Non-binding Terms. Any terms and conditions included in a Subscriber purchase order or a Service Provider invoice, as the case may be, shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties.

5.4 No Suspension of Services. Service Provider shall not suspend any part of the Services where: (a) Subscriber is reasonably disputing any amount due to Service Provider; or, (b) any unpaid but undisputed amount due to Service Provider is less than ninety (90) business days in arrears.

6. Subscriber Data.

6.1 Ownership. Subscriber's data ("Subscriber Data," which shall also be known and treated by Service Provider as Confidential Information) shall include: (a) Subscriber's data collected, used, processed, stored, or generated as the result of the use of the Services; and, (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the use of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed herein. Subscriber Data is and shall remain the sole and exclusive property of Subscriber and all right, title, and interest in the same is reserved by Subscriber. This Section shall survive the termination of this Agreement.

6.2 Service Provider Use of Subscriber Data. Service Provider is provided a limited license to Subscriber Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display Subscriber Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain Subscriber Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose Subscriber Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, the applicable Exhibit A, and applicable law; and, (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Subscriber Data for Service Provider's own purposes or for the benefit of anyone other than Subscriber without Subscriber's prior written consent. This Section shall survive the termination of this Agreement.

6.3 Extraction of Subscriber Data. Service Provider shall, within ten (10) business days of Subscriber's request, provide Subscriber, at an additional charge, an extract of the Subscriber Data.

6.4 Backup and Recovery of Subscriber Data. As a part of the Services, Service Provider is responsible for maintaining a backup of Subscriber Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in an Exhibit A, Service Provider shall maintain a contemporaneous backup of Subscriber Data that can be recovered within two (2) hours at any point in time. Additionally, Service Provider shall store a backup of Subscriber Data in an off-site "hardened" facility no less than daily, maintaining the security of Subscriber Data, the security requirements of which are further described herein. Any backups of Subscriber Data shall not be considered in calculating storage used by Subscriber.

7. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

7.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, Subscriber Data shall be deemed to be Confidential Information.

7.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

7.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person. However, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Service Provider may not be considered confidential under Texas law, or pursuant to a Court order.

7.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek

and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of Subscriber, at the sole election of Subscriber, the immediate termination, without liability to Subscriber, of this Agreement or any Exhibit A corresponding to the breach or threatened breach.

- 7.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement or an Exhibit A, in whole or in part, each party shall, within ten (10) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Service Provider shall return Subscriber Data to Subscriber following the timeframe and procedure described further in this Agreement. Should Service Provider or Subscriber determine that the return of any non-Subscriber Data Confidential Information is not feasible, such party shall destroy the non-Subscriber Data Confidential Information and shall certify the same in writing within ten (10) calendar days from the date of termination to the other party.

8. Data Privacy and Information Security.

- 8.1 Undertaking by Service Provider. Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Subscriber Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Subscriber Data; (c) protect against unauthorized disclosure, access to, or use of the Subscriber Data; (d) ensure the proper disposal of Subscriber Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's data privacy and information security program be less stringent than the safeguards used by Subscriber.

9. Proprietary Rights.

- 9.1 Pre-existing Materials. Subscriber acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.
- 9.2 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.
- 9.3 The provisions of this Section shall survive the termination of this Agreement.

10. Indemnification; Limitation of Liability; Insurance.

- 10.1 General Indemnification. Service Provider agrees to indemnify, defend, and hold harmless Subscriber and its officers, directors, agents, and employees (each, an "Indemnitee") from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating

to any act, error or omission, negligence, or misconduct of Service Provider, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Service Provider; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; or, (d) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of an Indemnitee.

- 10.2 Proprietary Rights Indemnification. Service Provider agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that Subscriber is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Service Provider shall, at its expense: (a) obtain for Subscriber the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by Subscriber; or, (c) in the event that Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Service Provider shall reimburse to Subscriber any prepaid fees and the full cost associated with any Transition Services.
- 10.3 Indemnification Procedures. Promptly after receipt by Subscriber of a threat, notice, or filing of any Claim against an Indemnitee, Subscriber shall give notice thereof to Service Provider, provided that failure to give or delay in giving such notice shall not relieve Service Provider of any liability it may have to the Indemnitee except to the extent that Service Provider demonstrates that the defense of the Claim is prejudiced thereby. Service Provider shall have sole control of the defense and of all negotiations for settlement of a Claim and Subscriber shall not independently defend or respond to a Claim; provided, however, that: (a) Subscriber may defend or respond to a Claim, at Service Provider's expense, if Subscriber's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and, (b) Subscriber shall have the right, at its own expense, to monitor Service Provider's defense of a Claim. At Service Provider's request, Subscriber shall reasonably cooperate with Service Provider in defending against or settling a Claim; provided, however, that Service Provider shall reimburse Subscriber for all reasonable out-of-pocket costs incurred by Subscriber (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.
- 10.4 Third-Party Beneficiaries. For the purposes of this Section and Service Provider's obligations hereunder, non-party Indemnitees are third-party beneficiaries of this Agreement in accordance with its terms. Any action or consent taken by Subscriber on its own behalf is binding upon the non-party Indemnitees for the purposes of this Section. Other than as provided for in this Section, this Agreement is for the sole benefit of the signatories hereto and their permitted successors and assigns. Nothing, express or implied, in this Agreement is intended to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor non-party Indemnitees.
- 10.5 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND / OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS

AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT APPLY TO: (A) A PARTY'S OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THIS AGREEMENT; (B) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR, (C) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY, AS FURTHER DESCRIBED IN THIS AGREEMENT. This Section shall survive the termination of this Agreement.

10.6 Insurance.

Prior to the commencement of any work and/or service under this contract, Service Provider must provide a completed Certificate(s) of Insurance to CITY's Information Technology Services Department. The certificate must be:

- clearly labeled with the legal name of the contract in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and
- properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Information Technology Services Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

If the City does not receive copies of insurance endorsement, then by executing this Agreement, Service Provider certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this contract.

The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

Service Provider shall obtain and maintain in full force and effect for the duration of this Agreement, at Service Provider's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the Service Provider claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

INSURANCE TYPE	LIMITS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000

3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors*	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
6. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
*if applicable	

Service Provider must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Service Provider and provide a certificate of insurance and endorsement that names Service Provider and CITY as additional insureds. Service Provider shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Service Provider must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Attn: Information Technology Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Service Provider's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Service Provider shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend Service Provider's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies CITY may have upon Service Provider's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order Service Provider to stop work and/or withhold any payment(s) which become due to Service Provider under this Agreement until Service Provider demonstrates compliance with requirements.

Nothing contained in this Agreement shall be construed as limiting the extent to which Service Provider may be held responsible for payments of damages to persons or property resulting from Service Provider's or its subcontractors' performance of the work covered under this Agreement.

Service Provider's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

Service Provider and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

11. General.

11.1 Relationship between Subscriber and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for Subscriber or in any way to bind

or to commit Subscriber to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Subscriber. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Subscriber. In recognition of Service Provider's status as an independent contractor, Subscriber shall carry no Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. Subscriber shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Subscriber.

- 11.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and forum of the state and federal courts in the State of Texas in all questions and controversies arising out of this Agreement.
- 11.3 Compliance with Laws; Subscriber Policies and Procedures. Both parties agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Service Provider shall comply with Subscriber policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.
- 11.4 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any Subscriber supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to Subscriber, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.
- 11.5 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of Subscriber Data. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of Service Provider's subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for Subscriber to access or use the Services. Within thirty (30) calendar days following the Effective Date and on an annual basis thereafter until the termination of this Agreement, Service Provider shall provide its then-current business continuity plan ("Business Continuity Plan") to Subscriber upon Subscriber's request. The Business Continuity Plan shall include: (a) Services and Subscriber Data backup and recovery procedures; (b) fail-over procedures; and, (c) how Service Provider will

interact with its business continuity suppliers, if any. Service Provider shall test its Business Continuity Plan on an annual basis until the termination of this Agreement and shall provide the test results to Subscriber upon Subscriber's request.

- 11.6 **No Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 11.7 **Notices.** Any notice given pursuant to this Agreement shall be by email or in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 11.8 **Assignment of Agreement.** This Agreement and the obligations of Service Provider hereunder are personal to Service Provider and its staff. Neither Service Provider nor any successor, receiver, or assignee of Service Provider shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of Subscriber. In the case of an assignment by Service Provider, Service Provider represents and warrants that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services. Subscriber, at Subscriber's sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of Subscriber's business.
- 11.9 **Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.
- 11.10 **Entire Agreement.** The City of San Antonio ITSD Contract Overlay Document for TIPS Contract 230105, this Agreement, the LyncVerse Technologies, Inc., and TIPS Vendor Agreement 230105 Technology Solutions, Products, and Services, and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Subscriber and Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 11.11 **Cumulative Remedies.** All rights and remedies of Subscriber herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.

12. **Non-discrimination.** As a party to this contract, Service Provider understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

13. State Prohibition on Contracts

A. This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

Prohibition on Contracts with Companies Boycotting Israel.

Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

By executing contract documents with the City of San Antonio ("City"), Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association;

or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

By submitting executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

B. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. You hereby certify that you are not identified on such a list and that you will notify City should you be placed on such a list while under contract with City. City hereby relies on your certification. If found to be false, or if you are identified on such list during the course of this contract with City, City may terminate the Contract for material breach.

C. S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, you acknowledge that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. You agree that the contract can be terminated if you knowingly or intentionally fail to comply with a requirement of that subchapter.

By signing this contract, you warrant and certify, and a contract awarded pursuant to this contract is made in reliance thereon, that you, have not knowingly or intentionally failed to comply with this subchapter in a previous offer or contract. City hereby relies on your certification, and if found to be false, City may terminate the Contract for material breach.

14. Click Through Terms

Regardless of any other provision or other license terms which may be issued by Service Provider after the effective date of this contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap/click-through), the terms and conditions set forth herein shall supersede and govern the license terms between Subscriber and Service Provider.

In the event that conflicting or additional terms in Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of Subscriber, such conflicting or additional terms shall not take precedence over these terms.

EXHIBIT A

Service Provider's Software as a Service Statement of Services

Pricing

Defined in Contract Overlay

INVOICING & PAYMENT TERMS

Defined in Contract Overlay

CONTRACT PERIOD:

Start Date and End Date. [Defined in Contract Overlay]

Executed on the dates set forth below by the undersigned authorized representative of Subscriber and Service Provider to be effective as of the Start Date.

Empyra Response Time to Issues

The following table defines our response to issues raised. It is preferred that issues are raised through JIRA but we do also support calls to our support line which is staffed 8am-5pm Eastern time.

Classification	Description	Time to First Response	Time to Resolution
Critical (25)	A problem has made a critical application function unusable or unavailable and no workaround exists.	Within 2 hours of an 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.	Within 4 hours of a 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.
Major (15-20)	A problem has made a critical application function unusable or unavailable, but a workaround exists. or A problem has made an important application function unusable or unavailable and no workaround exists.	Within 4 hours of an 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.	Within 16 hours of a 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.

Moderate (6-12)	A problem has diminished critical or important application functionality or performance, but the functionality still performs as specified in the user documentation.	Within 4 hours of a 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.	Within 40 hours of a 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.
Minor (1-5)	A problem has diminished supportive application functionality or performance.	Within 4 hours of a 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.	Within 80 hours of a 8:00 AM – 5:00 PM (EST); Monday – Friday business calendar.

Our support line is also open from 8am-5pm Eastern time during normal working days. Our maintenance period is Sunday morning before 10am

CITY OF SAN ANTONIO (SUBSCRIBER)

By: _____

Name: _____

Title: _____

Date: _____

EMPYRA.COM, INC. (SERVICE PROVIDER)

By: _____

Name: __Trevor Aulick_____

Title: Empyra, VP

Date: _____