

AN ORDINANCE TO AUTHORIZE AND APPROVE A SOFTWARE LICENSE AGREEMENT, SOFTWARE IMPLEMENTATION SERVICES AGREEMENT, SUPPORT AND MAINTENANCE AGREEMENT, AND HOSTING SERVICE AGREEMENT BETWEEN THE CITY OF WILMINGTON AND SYSTEMS & SOFTWARE, INC.

#0357

Sponsor:

**Council
Member
Johnson**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City publicly advertised a request for proposals for a professional services agreement (Contract 23032DFPS) for software and related services for utility billing, and subsequently awarded the agreement to Systems & Software, Inc., the highest ranked proposal; and

WHEREAS, in order to obtain the necessary software and related services for utility billing, the City would like to enter into the following four (4) interrelated agreements with Systems & Software, Inc.: (i) Software License Agreement; (ii) Software Implementation Services Agreement; (iii) Support and Maintenance Agreement; and (iv) Hosting Service Agreement (collectively, the “Agreements”); and

WHEREAS, the initial term of the Agreements is for the period of three (3) years from November 1, 2023 through October 31, 2026, with the possibility of three (3) extensions of one (1) year thereafter; and

WHEREAS, the estimated price of the Agreements if all of the extension options are exercised is approximately Four Million Dollars (\$4,000,000.00); and

WHEREAS, it is the recommendation of the Department of Finance that City Council authorize the City to enter into the Agreements; and

WHEREAS, City Council deems it necessary and appropriate to authorize the City to enter into the Agreements.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The Agreements (being the Software License Agreement, Software Implementation Services Agreement, Support and Maintenance Agreement, and Hosting Service Agreement between the City of Wilmington and Systems & Software, Inc.), a copy of which Agreements, in substantial form, are attached hereto as Exhibit “A”, for the period of three (3) years with the possibility of three (3) extensions of one (1) year thereafter, at an estimated price of Four Million Dollars (\$4,000,000.00) if all of the extension options are exercised, are hereby approved, and the Mayor, or his designee, is hereby authorized to execute the Agreements, as well as to take all additional undertakings related thereto as may be necessary.

SECTION 2. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading.....October 5, 2023
Second Reading.....October 5, 2023
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2023.

Mayor

SYNOPSIS: This Ordinance authorizes the City to execute four (4) agreements (namely, a Software License Agreement, Software Implementation Services Agreement, Support and Maintenance Agreement, and Hosting Service Agreement) with Systems & Software, Inc. for software and related services for utility billing.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is four (4) three-year agreements with the possibility of three (3) additional extensions of one (1) year thereafter, at an estimated price of Four Million Dollars (\$4,000,000.00) if all of the extensions are exercised.

W0122644

EXHIBIT A

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT made as of November 1, 2023 (the “Effective Date”).

BETWEEN:

SYSTEMS & SOFTWARE, INC.
(“S&S”)

- and -

City of Wilmington
(the “Organization”)

RECITALS:

1. S&S owns the Software (as defined below);
2. The Organization wishes to acquire a license to utilize the Software;
3. S&S wishes to grant the Organization a license to utilize the Software; and
4. The Organization and S&S agree to enter into four (4) separate agreements each dealing with a separate aspect of the Software: a Software License Agreement, a Support and Maintenance Agreement, a Software Implementation Services Agreement and a Hosting Service Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this Software License Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I **INTERPRETATION**

Section 1.1 Definitions

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) “**Agreement**” and similar expressions mean this Software License Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All references to “Articles” or “Sections” mean and refer to the specified Article or Section of this Agreement except where a different agreement is explicitly identified.

- (b) **“Completion of Services”** shall have the definition ascribed to it in the Software Implementation Services Agreement.
- (c) **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be establish by evidence that would be acceptable to a court of competent jurisdiction.
- (d) **“Designated Computer System”** shall mean the Organization’s platform and operating system environment which is operating the Software. This term shall only apply to an on-premise system.
- (e) **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.
- (f) **“Embedded Third Party Software”** means components licensed by S&S for use in the Software (ex. Java, JasperSoft (Document Generation)).
- (g) **“License”** means the license rights granted to the Organization pursuant to Section 2.01(a) hereof and includes both an Active Account License and a Site License.
- (h) **“License Fees”** means the fees paid by the Organization to S&S for the license of the Software and Third Party Software pursuant to the terms of this Agreement.
- (i) **“Release”** means an Update and an Upgrade.
- (j) **“Required Programs”** shall mean the additional software programs required for the proper performance of the Software, as detailed in the attached Schedule “L-1”.
- (k) **“Site”** if applicable (for an on-premise solution) means the production environment described in Schedule “L-1” and at an unlimited number of non-production environments.
- (l) **“Software”** means the software products that are listed in Schedule “L-1” and includes any Update(s) or Upgrade(s) that have been and will be provided to the Organization. Embedded Third Party Software components licensed by S&S for use in the Software shall be included in the definition of Software. Third Party Software is not included in the definition of Software except where this Agreement explicitly states otherwise.
- (m) **“Third Party Software”** means the third party software product licensed to the Organization by the applicable licenses or as listed in Schedule “L-1”. For the avoidance

of doubt, this term does not include embedded thirty party software components licensed by S&S for use in the Software.

- (n) **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or regulatory changes. An Update is designated by a change in the digits to the right of the second decimal in the version number (for example, a change from 7.9.3.001 to 7.9.3.002).
- (o) **“Upgrade”** means a major release of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is designated by a change in the number to the left of the decimal point in the version number (for example, a change from 7.9 to 8.0. “Upgrade” may also include technology changes, platform changes, and complete rewrites of the Software which may change the numbering schema, but is included as “Upgrade” for the Organization.
- (p) **“User”** means any employee of the Organization or any of the Organization’s contractors, and agents who are authorized pursuant to the terms of this Agreement to have access to the Software either onsite or remotely to support the Organization’s lawful use of the Software or to access the Organization’s information, transactions and reports.

Section 1.2 Currency

Unless otherwise specified, all references to amounts of money in this Agreement and the related Schedules refer to U.S. currency.

Section 1.3 Schedules

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

Schedule “L-1” - Description of Software

Schedule “L-2” - License Fees & Payment Schedule

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this Agreement shall control unless otherwise expressly stated in the provision giving rise to the conflict or inconsistency.

ARTICLE II **SOFTWARE LICENSES**

Section 2.1 Grant of Licenses

- a. Subject to the terms and conditions of this Agreement including without limitation the payment of the License Fees, S&S hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Designated Computer System at the Site and for the number of Active Accounts specified in Schedule “L-2” (“License Fees and Payment Schedule”). All

Releases installed by the Organization are subject to this License. This License and the other terms and conditions related to this License do not apply to Third Party Software except as this Agreement may state otherwise.

- b. Any Software furnished by S&S in machine-readable form may be copied in whole or in part by the Organization for use on the Designated Computer System, access to which by Users can be from any computer terminal, whether internal to or external to the Organization's facility incorporating the Designated Computer System. To the extent that any temporary files associated with the Software are created during such use on terminals those temporary files are permitted under this License but only for such time that the temporary files are actually required. The Organization agrees that the original copy of all Software furnished by S&S and all copies thereof made by the Organization are and at all times remain the sole property of S&S. The foregoing shall only apply to an on-premise solution.
- c. Any License granted under this Agreement permits the Organization to use the Software for its internal business purposes including, but not limited to, performing testing, disaster recovery, disaster testing, training, archival and backup as the Organization deems necessary. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality, and in the case that independent contractor may offer competing technical services to S&S, have been approved by S&S in advance of the independent contractors' access to the Software, such approval shall not be unreasonably withheld. Prior approval shall not be required for non-technical independent contractor services. The Organization shall be responsible for all of the actions of and any misuse of the Software by any independent contractor.
- d. The Organization may duplicate Documentation, at no additional charge, for the Organization's internal use so long as all required proprietary markings are retained on all duplicated copies.
- e. For further clarification, the Software is licensed to the Organization on multiple levels. The Software is licensed on a "Current Account Volume" and "User License" basis as set forth in Schedule "L-2".
- f. The License permits the Organization to use the Software in a hosted environment or, in the case of an on-premise solution, on the Designated Computer System in one (1) production environment and unlimited non-production environments for the purposes of disaster recovery, disaster testing, training, archival and backup. In the case of an on-premise solution, the Organization requires a separate License for each production environment into which the Software or any portion thereof is read in machine-readable form.
- g. The Software is for use by the Organization in the current utility entity at the projected User level and the current Organization Account Volume. An account is defined as the single highest increment of an account number (example - .300 - .399) with any status other than "never activate." An account could have a metered service, a non-metered service, or a combination of the two. The parties agree that, for purposes of this Agreement, the

Organization's current Account Volume is considered to be 40,000 utility accounts, and 30,000 Property Tax Accounts (the "Current Account Volume"). The parties agree that if the Organization exceeds a 5% Account Volume growth by their renewal maintenance date, the Organization shall pay a per service fee at S&S' then-current fees. The parties agree that, for purposes of this Agreement, the Organization's current number of users is 60 (the "Current Number of Users"). The Organization agrees that, if the Organization expands the number of Users beyond the Current Number of Users, the Organization shall pay an additional per User fee. The additional per User fee for the period of twelve (12) months following the Effective Date shall be as specified in Schedule "L-2" and after such date the fee shall be subject to pricing at S&S' then-current fees. S&S shall also be entitled to include an automatic script as part of the Software that audits and reports the current Account Volume and number of Users to S&S on a periodic basis.

- h. As between S&S and the Organization, S&S reserves all rights, title and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.

Section 2.2 Term of Agreement; License

The initial term of this Agreement and the License shall be for three (3) years commencing on the Effective Date (the "Initial Term"). After the Initial Term, the Organization may renew this Agreement and the License for three (3) additional one-year terms.

Section 2.3 Restrictions on Use

- a. Without limiting the generality of Section 2.01 and in addition the other restrictions listed therein, the Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software for any purpose other than in connection with the Organization's primary business or operations; (ii) disassemble, de-compile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivate works of the Software; (iv) rent, lease, lend, or use the Software for timesharing or bureau use or to publish or host the Software for others to use; or (v) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement. The Organization shall be wholly liable to S&S for any misuse of the Software and these restrictions are absolute except as and only to the extent that this Agreement may expressly permit the Organization to do otherwise.
- b. The Software and related materials supplied by S&S are protected by copyright and trademark laws. The Software is licensed and may not be resold by the Organization. Any rights not expressly granted herein are reserved. The Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by S&S.

Section 2.4 Ownership of Software and Confidential Information

- a. The Organization acknowledges that the Software contains proprietary information and Confidential Information of S&S which shall, at all times, remain the property of S&S and,

in addition to its obligations outlined in Section 2.03, the Organization agrees to treat such Confidential Information in accordance with Subsections (b) and (c) herein.

- b. The Organization will take the same care to safeguard the Software as it takes to safeguard its own Confidential Information of a like nature and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
- c. In order to assist S&S with the protection of its proprietary information and Confidential Information and to enable S&S to ensure that the Organization is complying with its obligations, the Organization shall permit S&S to visit during normal business hours any premises at which the Software is used or installed and shall provide S&S with access to its Software. S&S shall provide the Organization with reasonable notice of any such audit. Any such audit shall be supervised by the Organization.

Section 2.5 Ownership and Disposition of Documents

- a. The parties agree that no materials or documents are being created for the Organization by S&S under this Agreement. All materials and documents which were developed or prepared by S&S for general use and which are not the copyright of any other party or publicly available, including educational materials, shall continue to be the property of S&S.

Section 2.6 Third Party Software

- a. S&S may distribute to Organization Third Party Software which will be described as Third Party Software in Schedule "L-1". The Organization shall pay S&S for the Third Party Software in the amount of the purchase price(s) listed on Schedule "L-2", which shall be due upon execution of the Agreement. Future Releases of the Software may require alternate third party software to be licensed by the Organization, which will be subject to a third party license agreement between the Organization and the relevant third party software licensor. In such case Schedule "L-1" shall be amended in accordance with Section 6.08 to add any such third party software and it shall be deemed "Third Party Software" for the purposes of this Agreement.
- b. The Third Party Software is licensed to the Organization by the applicable licensor listed in Schedule "L-1" and subject to the terms and conditions of the applicable license agreement for such Third Party Software. S&S makes no warranties, express or implied, with respect to the Third Party Software, including, without limitation, their merchantability or fitness for a particular purpose and S&S accepts no liability of any kind whatsoever with respect to the Third Party Software. Any warranty the Organization has with respect to the Third Party Software shall be solely provided by the Third Party Software licensor except where this Agreement expressly states otherwise.
- c. The parties acknowledge that the Software may also include Embedded Third Party Software components licensed by S&S for use in the Software. The terms and conditions of Sections 3, 5.1 and 6 of this Agreement shall inure for such third party's benefit and the license of such Embedded Third Party Software components are subject to the license and sublicense rights granted to S&S in connection with its use and distribution as part of the

Software. The third party software owner retains right, title and interest in such software, including statutory enforcement rights in the event of infringement.

- d. The Organization agrees that it shall not permit any third party to have access to the Third Party Software during the term of this Agreement and that the restrictions as set out in Section 2.3 and the confidentiality obligations set out in Section 6.1 shall equally apply to the Third Party Software, subject to any specific permissions that are provided in the license provided by the third party licensor to the Organization.

ARTICLE III **REPRESENTATIONS AND WARRANTIES**

Section 3.1 Warranty of Performance

S&S warrants to the Organization that:

- a. The Software will substantially perform as described in the Documentation for a period of ninety (90) days from Completion of Services if the Software is used in accordance with the Documentation, the terms of this Agreement and where the Organization has the Required Programs and the hardware meets the requirements of Section 3.4(b). The Organization's sole recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software.
- b. In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by S&S, provided the Organization has entered into a valid Support and Maintenance Agreement with S&S, S&S will make reasonable commercial efforts to provide the Organization with a correction or suitable workaround in accordance with the terms of such Support and Maintenance Agreement. Without limiting S&S's obligations under the Support and Maintenance Agreement, S&S reserves the right to correct any defects about which it is made aware and to produce Releases at a time of S&S's own choosing and at S&S's discretion, however, this will be done within a commercially reasonable time frame.

Section 3.2 Exclusions to Warranty

S&S shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of S&S, including:

- a. Where the installation, integration, modification or enhancement of the Software has not been carried out by S&S, at S&S's direction, or by S&S's authorized agent, or where the Organization has taken any action which is expressly prohibited by the Documentation or this Agreement;
- b. Any use or combination of the Software with any software, equipment or services not supplied by or on behalf of S&S;
- c. User error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted in this Agreement;

- d. The Organization's failure to install a new Update which has been released to remedy an error or bug, and which S&S has stated to the Organization is a required Update necessary for security purposes or for legislative compliance purposes or other reasons as S&S may determine is important in its reasonable discretion; or
- e. Any other force majeure event as described in Section 6.2.

Section 3.3 No Other Warranties

TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED AND ALL OTHER MATERIALS AND SERVICES ARE PROVIDED TO THE ORGANIZATION "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

S&S, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HEREWITH, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

S&S DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE ORGANIZATION'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF S&S.

Section 3.4 Required Programs

- a. The Organization acknowledges that the use of the Software requires that the Organization obtain and install additional required software programs (the "Required Programs"), as detailed in the attached Schedule "L-1". The Organization agrees that the acquisition of the Required Programs shall be at its sole cost and that the cost thereof is not included in the fees herein, including for any future updates about which the Organization is provided with commercially reasonable advance notice.
- b. The Organization's network and infrastructure must also be of sufficient quality, condition and repair, and the Organization agrees to maintain its hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of the proper installation and implementation of the Software in accordance with the Software Implementation Services Agreement. If S&S determines that the Organization's hardware is not of sufficient quality, condition and repair, S&S shall notify the Organization in

writing of the hardware deficiencies. The Organization will use reasonable efforts to remedy any hardware deficiencies within 30 days of notification. The foregoing shall only apply to an on-premise solution.

- c. The Organization shall provide no less than 180 days' notice where the Organization anticipates changing any of the third party software or hardware products in use on the Designated Computer System so that S&S may assess whether the Software will function with the different software or hardware. Where S&S determines that the Software may not function with the alternative software or hardware then any upgrade by the Organization to the software or hardware will be at the Organization's sole risk. S&S and the Organization may be required to enter into a statement of work document subject to additional fees in order to make this determination. The foregoing shall only apply to an on-premise solution.

ARTICLE IV **FEES AND PAYMENTS**

Section 4.1 Fees and Payments

- a. The Organization agrees to pay S&S total license fees detailed in Schedule "L-2" (the "License Fees"), which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule "L-2". The License is subject to the full payment of the License Fees.
- b. Except for any aspect of the License Fee which is payable on the Effective Date, during the term of this Agreement, the Organization shall have thirty (30) days after the date of the invoice as outlined in the payment schedule in Schedule "L-2" to pay S&S the applicable License Fee.

ARTICLE V **REMEDIES, LIABILITY AND INDEMNITY**

Section 5.1 Remedies and Liability

- a. Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- b. The Organization and S&S recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of S&S arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and S&S's liabilities will be limited as set forth in Section 3.1, Section 6.2 and the remedies set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
- c. EXCEPT FOR DAMAGES ARISING OUT OF (A) DAMAGE TO TANGIBLE PROPERTY, (B) INJURY OR DEATH TO PERSONS, OR (C) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF S&S, BOTH PARTIES AGREE

THAT S&S'S ENTIRE LIABILITY (UNDER CONTRACT OR IN TORT INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO OR ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE LICENSE FEES PAID BY THE ORGANIZATION TO S&S UNDER THIS AGREEMENT DURING THE THEN-CURRENT TERM (AND IN NO EVENT BEING GREATER THAN TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM).

- d. IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- e. CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

Section 5.2 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 5.3 Intellectual Property Indemnity

- a. In the event there is a third party claim against the Organization alleging that the Organization's use of the Software in accordance with this Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trade-mark or trade secret or other intellectual property that is valid and enforceable in the Organization's jurisdiction, S&S shall, at its expense, defend, indemnify the Organization and pay any final judgment (including all damages awarded against the Organization) against the Organization or settlement agreed to by S&S on the Organization's behalf. This indemnity is only effective where (i) the Organization has not made any admissions or begun settlement negotiations either prior to or after providing notice to S&S of the applicable claim except with S&S's prior written consent, (ii) S&S has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iii) the Organization assists and provides information to S&S throughout the action or proceeding, and (iv) the Organization

has not modified the Software in any manner whatsoever except with the prior written consent of S&S.

- b. S&S' liability for any claims under this Section 5.3 shall be reduced to the extent such claim arises from (i) alterations or modifications to the Software by the Organization or a third party in any manner whatsoever except with the prior written consent of S&S; (ii) combination, integration or use of the Software with software, hardware or other materials not approved by S&S where such claim would not have arisen but for such combination, integration or use; (iii) use of the Software other than in compliance with this Agreement; (v) compliance with the Organization's written instructions or specifications; or (vi) use of the Software after notice from S&S that it should cease due to possible infringement.
- c. Any breach by the Organization of its covenants under this Section 5.3 shall nullify this indemnity but not the sole right of S&S to have full and complete authority of the defense to defend such claim or proceeding and of all negotiations related therewith and the settlement thereof. In the event that the Organization's use of the Software is finally held to be infringing or S&S deems that it may be held to be infringing, the Organization agrees that the only remedy available to it is that S&S shall be, at S&S's election, for S&S to: (1) procure for the Organization the right to continue use of the Software; or (2) modify or replace the Software so that it becomes non-infringing. In the event S&S determines that (1) or (2) is not commercially practicable, S&S may terminate the license with respect to the infringing module and the Organization shall return the original and all whole or partial copies of the module and related Documentation.
- d. The foregoing states S&S's entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade-mark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof.
- e. The Organization may, at the Organization's sole cost and expense — which is outside the scope of this indemnity—retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances (except where the court has specifically made an order against such attendance) related to the proceeding.
- f. The indemnity provisions of this Section 5.3 shall not apply to Third Party Software and S&S shall have the right to substitute the licensor of the Third Party Software to perform S&S's obligations hereunder and the Organization agrees to release S&S from any obligations related to such Third Party Software.

Section 5.4 Other Indemnity

Subject to the limitation of liability herein, S&S shall defend, indemnify, and hold harmless the Organization, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities, and expenses resulting in property damage or personal injury, including reasonable attorneys' fees, resulting from the negligent acts or omissions of S&S, its employees,

agents, subcontractors, consultants, or subconsultants, in performing the services required under this Agreement.

Section 5.5 Remedies

Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of S&S arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE VI **GENERAL**

Section 6.1 Confidentiality

- a. Duty Owed to the Organization -- S&S acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, S&S agrees:
 - (i) To maintain this information in confidence;
 - (ii) Not to use this information other than in the course of this Agreement;
 - (iii) Not to disclose or release such information;
 - (iv) Not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of S&S; and
 - (v) To take all reasonable actions, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with S&S, do not disclose or use, directly or indirectly, for any purpose other than for performing the services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.
- b. Duty Owed to S&S -- The parties agree that if the Organization breaches any term of Section 2.3 or Section 2.4 then S&S shall have the right to terminate this Agreement and the grant of Licenses herein forthwith without giving notice as set forth in Section 6.2(a).

Section 6.2 Termination

- a. If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to (i) issue a written notice disputing the alleged default within such thirty (30) day period or (ii) to correct the default within ninety (90) days following

receipt of the Default Notice, the other party may terminate this Agreement effective upon written notice to the other party to that effect.

- b. If the Organization has failed to pay the License Fees in accordance with Article IV, then S&S shall have the right to terminate the license rights granted herein and this Agreement effective immediately upon written notice to the Organization.

Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favourably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

Section 6.3 Procedure on Termination

- a. If this Agreement is terminated prior to the Completion of Services (as defined in the Software Implementation Services Agreement), then within thirty (30) days following such termination, the Organization shall either return to S&S or delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify, under the hand of a duly authorized officer of the Organization, that all copies of the Software or any part thereof, in any form, within the possession or control of the Organization have either been returned to S&S or deleted.
- b. If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- c. The termination of this Agreement shall result in the concurrent termination of the Software Implementation Services Agreement, Hosting Services Agreement and Software Support and Maintenance Agreement.
- d. Despite Subsection (e) below, all warranties related to the Software automatically terminate upon the termination of this Agreement.
- e. The following sections and articles shall survive the termination of this Agreement: Section 3.2, Section 3.4, Section 5.1, Section 5.2, Section 5.4, Article IV and Article VI.

Section 6.4 Dispute Resolution

Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place in the State of Delaware at a time and location which

is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorney's fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. All legal proceedings in connection with this Agreement shall be resolved by a court of competent jurisdiction located in New Castle County, Delaware. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

Section 6.5 Addresses for Notice

All notices, demands, and requests, required to be given under this Agreement by either party to the other shall be in writing and delivered by hand, or by registered or certified mail, postage prepaid, to the respective parties at the following addresses, or to such other address as may be given by a party to the other pursuant hereto:

In the case of S&S, to:

SYSTEMS & SOFTWARE, INC.

10 East Allen St, Suite 201
Winooski, VT 05404
Attention: Executive Vice President
Telephone: 802.865.1170

and in the case of the Organization, to:

City of Wilmington
Department of Finance
800 N. French Street, 5th Floor
Wilmington, DE 19801
Attention: J. Brett Taylor, Director of Finance
Telephone: 302.576.2401
jbtaylor@wilmingtonde.gov

Notice shall be deemed to have been given upon receipt thereof as to communications that are delivered by hand, or by registered or certified mail, and as to communications made by United States mail, on the third (3rd) day after mailing.

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.5.

Section 6.6 Assignment

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.

Section 6.7 Reorganizations

The Organization acknowledges that the License Fee set out in this Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the Organization amalgamates, consolidates or undergoes any similar form of corporate reorganization or transition (a "Reorganization"), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional Active Accounts or sites, S&S shall be entitled to receive, and the Organization shall pay, an additional License fee based on the then prevailing License fee in effect. The provisions of this Section 6.7 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 6.7 shall not apply where the Organization undergoes a Reorganization involving only other organizations that have already have a valid License to use the same Software. For purposes of this Agreement, any corporate changes undergone by the Organization will be characterized as either an assignment, in which case Section 6.6 will apply, or a Reorganization, in which case Section 6.7 will apply, but it is not intended that Section 6.6 and Section 6.7 will apply to any single sequence of events, if such application would result in a duplication of the fees provided for in those provisions.

Section 6.8 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. No other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of S&S by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. However, the parties agree that three (3) other agreements are being entered into concurrently with this Agreement which are in addition to any of the third party agreements detailed herein. These three (3) other agreements are the Support and Maintenance Agreement, Software Implementation Services Agreement, and the Hosting Services Agreement each of which are separate agreements and are binding in their own right and upon their own terms. The terms of this Agreement may not be changed except by a written amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by S&S, with such provisions being deemed deleted.

Section 6.9 Section Headings

Section and other headings in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

Section 6.10 Governing Law

This Agreement shall be governed by the laws of Delaware and the federal laws of the United States applicable therein. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement.

Section 6.11 Trial by Jury

The Organization and S&S hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of S&S in connection therewith or contemplated thereby.

Section 6.12 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed modified to the extent necessary in order to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

Section 6.13 Waiver

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the Agreement or by law despite such forbearance or notice.

Section 6.14 Counterparts

This Agreement may be executed in counterparts (in an email PDF or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

Section 6.15 Further Assurances

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

Section 6.16 Allocation of Risk

The Organization acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between the

Organization and S&S and set forth an allocation of risk reflected in the fees and payments due hereunder.

Section 6.17 Relationship

The parties are and shall at all times remain, independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the parties. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is in law responsible.

Section 6.18 U.S. Government End-Users

The Software (i) was developed exclusively at private expense; (ii) is a trade secret of S&S for the purposes of the Freedom of Information Act; (iii) is “commercial computer software” subject to limited utilization (Restricted Rights); and (iv) including all copies of the Software, in all respects is and shall remain proprietary to S&S or its licensors. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions for software developed exclusively at private expense as set forth in: (i) for the DoD, the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or 252.227.7014 or any successor clause, and (ii) for all government agencies, the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19 or any successor clause. The U.S. Government must refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it was acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above. The manufacturer/owner is Systems & Software, Inc., **10 East Allen St, Suite 201, Winooski, Vermont 05404.**

Section 6.19 Equitable Relief

The Organization acknowledges and agrees that it would be difficult to compute the monetary loss to S&S arising from a breach or threatened breach of this Agreement and that, accordingly, S&S will be entitled to specific performance, injunctive or other equitable relief in addition to, or instead of monetary damages in the event of a breach or threatened breach of this Agreement by the Organization.

Section 6.20 Force Majeure

No default, delay or failure to perform on the part of S&S shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its reasonable control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, shelter-in-place orders, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

Section 6.21 Survival

The following sections and articles shall survive the termination or expiration of this Agreement: Section 1.1, Section 1.2, Section 2.3, Section 2.4, Section 2.5, Section 2.6, 3, Section 3.4, Section 5.1, Article IV and Article VI and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder.

6.23 Insurance Coverage

S&S shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Agreement as follows: workers' compensation as required by law and commercial general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers. S&S shall provide the Organization with a certificate of insurance evidencing the above-stated coverage and naming the Organization as an additional insured with respect to the commercial general liability coverage.

6.24 Records of S&S

S&S shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the Organization to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the Organization or its authorized representatives upon request; provided, however, that no such audit shall occur more than once in any twelve-month period.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

SYSTEMS & SOFTWARE, INC.

By: _____

Name:

Title

CITY OF WILMINGTON

By: _____

Name:

Title:

Schedule "L-1"
Description of Software

Software

enQuesta™ software

Third Party Software

Capricorn Web Portal (Silverblaze)

Required Programs:

Does not apply as of the Effective Date of this Agreement as S&S will be hosting the Software.

Schedule "L-2"
License Fees and Payment Schedule

Payment Schedule:

License Fees – Due on contract signing \$241,915

Capricorn SaaS Fees:

Year 1	\$0
Year 2	\$46,250
Year 3	\$47,638
Year 4	\$49,067
Year 5	\$50,539
Year 6	\$52,055

Capricorn SaaS Fees will then be billed annually. Annual SaaS fees may increase each year based upon the increasing costs of doing business and providing services. S&S increases our fees using the greater of 5% or the US Bureau of Labor Statistics CPI-U annual change plus two percentage points.

Current Account Volume – ~40,000 active Utility accounts, and 30,000 Property Tax accounts

enQuesta User License – 60

License fee for each additional user\$5,941

- Note that 25% of the license fee for additional users, if applicable, will be applied to annual maintenance costs as well.

SOFTWARE IMPLEMENTATION SERVICES AGREEMENT

THIS SOFTWARE IMPLEMENTATION SERVICES AGREEMENT made as of the day of November 1, 2023 (the “Effective Date”).

BETWEEN:

SYSTEMS & SOFTWARE, INC.
(“S&S”)

- and -

The City of Wilmington
(the “Organization”)

RECITALS

1. The Organization wishes retain S&S to perform the Services (as defined herein).
2. The Organization and S&S agree to enter into four (4) separate agreements each dealing with a separate aspect of the software: a Software License Agreement, a Support and Maintenance Agreement, a Hosting Services Agreement and this Software Implementation Services Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I INTERPRETATION

1.1 **Definitions**

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) **“Agreement”** and similar expressions mean this Software Implementation Services Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All references to **“Articles”** or **“Sections”** mean and refer to the specified Article or Section of this Agreement except where a different agreement is explicitly identified.
- (b) **“Change Order”** means any written documentation between the Organization and S&S evidencing their agreement to change particular aspects of this Agreement.

- (c) **“Completion of Services”** means that the Software is fully operational and performing in conformity with the specifications set out herein. For purposes of this Agreement, Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as its predominate business system.
- (d) **“Final Acceptance”** means the date the Software has “gone live” and is in production use and the Organization has provided written Acceptance that the Software is performing in accordance with its published Documentation and the specifications of this Agreement. Within sixty (60) days of the Go Live date, the Organization will create a list of defects which must be cured before Final Acceptance is given. Final Acceptance will not be withheld for minor and inconsequential errors or Defects.
- (e) **“Statement of Work”** means the statement of work appended hereto as Schedule “ISA-1” delineating, among other things, the Services that will be provided by S&S to the Organization pursuant to this Agreement, as such schedule may be amended or modified by mutual specific written agreement of the parties’ respective representatives from time to time in accordance with the terms of this Agreement.
- (f) **“Services”** has the meaning set out in Section 2.1 hereof.

To the extent that a capitalized word is used in this Agreement, should it not be properly defined in this Agreement then it shall have the meaning attributed to it in the Software License Agreement executed concurrently with this Agreement. Any discrepancy between a defined term in this Agreement and one in the Software License Agreement shall be resolved in favor of the definition in this Agreement, to the extent that there is an inconsistency.

1.2 Schedules

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

Schedule “ISA-1”	-	Statement of Work
Schedule “ISA-2”	-	Fee Structure & Payment Schedule
Schedule “ISA-3”	-	Sample Form Change Order

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this Agreement shall control.

ARTICLE II CONSULTING SERVICES

2.1 S&S's Services

In order to achieve the Completion of Services, S&S agrees, subject to the terms and conditions of this Agreement, to perform the following services (the "Services") for the Organization, as detailed in the attached Statement of Work, Schedule "ISA-1":

- (a) Oversee and implement the conversion from the Organization's existing software applications to S&S's Software.
- (b) Install the Software and perform necessary set up and configuration operations.
- (c) Provide training.
 - (i) S&S recommends a maximum of ten (10) people in each training class for optimal training. In any training class exceeding ten (10) people, the Organization may be assessed an additional charge for additional instructors.
 - (ii) The Organization is required to make copies of the training manuals required for the training classes either by photocopy or electronic duplication each of which is subject to the restrictions and obligations contained in this Agreement.
 - (iii) On-line reference documentation is delivered with each release. The Organization may print this documentation solely for its internal use.
 - (iv) Cancellation of any on-site Services by the Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. The Organization will be billed for any non-recoverable direct costs incurred by S&S that result from a cancellation by the Organization with fourteen (14) days or less of scheduled on-site Services. Additionally, the Organization hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as S&S's then current schedule permits. S&S is not responsible for any delay in the Organization's project resulting from the Organization's cancellation of Services. If upon S&S arrival, the Organization is not adequately prepared or has not completed the assigned tasks for such visit by S&S, then the Organization will be billed 100% of the on-site fee and scheduled on-site Services can be cancelled by S&S. If additional Services are required because the Organization was not adequately prepared, S&S will provide a Change Order to the Organization for the additional Services.
- (d) The Statement of Work describes in greater detail the Services, the method by which the Services shall be performed and other obligations on the part of the two parties. To the extent that the Statement of Work more explicitly details the Services or the obligations of a party, then those details shall prevail over any other document that is less explicit. Any warranties or representations on the part of S&S in the Statement of Work are not binding on S&S and are merely provided for information purposes;

the only warranties and representations provided by S&S in respect of the Services and this Agreement are found in Article III.

2.2 **Performance by S&S**

- (a) **Manner of Performance** -- S&S shall perform the Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof.
- (b) **S&S's Discretion** -- S&S shall determine in its sole discretion the manner and means by which the Services shall be performed, with due consideration of adequate knowledge transfer to the Organization personnel. S&S will communicate openly with the Organization on its methodology, manner and means.
- (c) **Conduct on the Organization's Premises** -- The Services shall be performed with the Organization's full co-operation, on the premises of the Organization or, if agreed to by both parties, at an alternative location. S&S agrees, while working on the Organization's premises, to observe the Organization's rules and policies relating to the security thereof, access to or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information. S&S agrees that when it is working on the Organization's premises, its personnel shall observe the Organization's administrative and ethics codes relating to the security, access or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.
- (d) **Inquiries by the Organization** -- S&S shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.
- (e) **Independence** -- As an independent consultant, the Organization retains S&S on an independent contractor basis and not as an employee.
- (f) **Coordination of Services** -- S&S agrees to work closely with the Organization staff in the performance of Services and shall be available to the Organization's staff, consultants, and other staff at all reasonable times.
- (g) **Maintenance and Inspection** -- S&S shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. S&S shall allow a representative of the Organization, during normal business hours, to examine, audit, and make transcripts or copies of such records and any other documents created, pursuant to this Agreement. S&S shall allow inspection of all work, data, documents, proceedings, and activities related to the agreement for a period of two (2) years from the date of final payment under this Agreement unless S&S is required to maintain such records longer pursuant to any law or regulation.

2.3

Performance by the Organization

- (a) Co-operation by the Organization -- The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and agrees to act reasonably and co-operate fully with S&S to achieve the Completion of Services.
- (b) Project Manager -- The Organization shall appoint a project manager (the “Project Manager”) who shall work closely with S&S to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the Organization and their co-operation with and participation in such process.
- (c) Additional Organization Obligations
 - (i) The Organization shall install all Updates within a reasonable period of time of the Organization’s notification of their availability. However, any fix or correction designated as “critical” by S&S shall be implemented by Organization within thirty (30) days of notification to the Organization by S&S of its availability.
 - (ii) The Organization shall notify S&S of suspected defects in any of the Software supplied by S&S. The Organization shall provide, upon S&S request, additional data deemed necessary or desirable by S&S to reproduce the environment in which such defect occurred.
 - (iii) The Organization shall allow the use of online diagnostics on the Software supplied by S&S to the Organization, if required by S&S during problem diagnosis. The Organization shall provide to S&S, at Organization’s expense, access to the Designated Computer System via the Organization’s firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).
 - (iv) The Organization shall ensure that its personnel are, at relevant stages of the project, educated and trained in the proper use of the Software in accordance with applicable S&S manuals and instructions. If the Organization’s personnel are not properly trained as mutually determined by S&S and the Organization, the Organization agrees that such personnel will be trained by S&S or the Organization within fifteen (15) days of determination. If the Organization desires S&S to perform the required training, then S&S shall be compensated in accordance with this Agreement.
 - (v) The Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause. The Organization shall provide S&S with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.

- (vi) To the extent the Software is hosted by the Organization on-premise, the Organization shall have the responsibility for, with the guidance of S&S where applicable:
 - (A) the performance of any tests it deems necessary prior to the use of the Software.
 - (B) assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods.
 - (C) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.
 - (D) timely upgrade and keeping current all third-party license releases and/or software products to meet the requirements of the Software. For the sake of clarity, this does not include the Third Party Software unless expressly stated.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Warranty

S&S warrants that the Services will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

S&S shall have no liability hereunder if the Organization has modified the Software in any manner without the prior written consent of S&S.

3.2 No Other Warranties

The express warranties contained above are in lieu of all other representations, warranties and conditions, express or implied, whether arising by statute or otherwise in law or from a course of dealing, or usage of trade. Without limiting the generality of the foregoing, S&S does not represent or warrant and the Organization acknowledges that there are no further representations or warranties, whether express or implied, including any warranties regarding the merchantability of the Services nor for any outcome.

ARTICLE IV FEES AND PAYMENTS

4.1 Fees and Payments

- (a) The Organization agrees to pay S&S total fees as delineated in Schedule “ISA-2”. The fee structure and payment schedule is outlined in the attached Schedule “ISA-2”.

- (b) During the term of this Agreement, S&S shall deliver invoices to the Organization. Each invoice delivered to the Organization by S&S shall be due and payable within thirty (30) days of the Organization's receipt thereof.
- (c) The Organization shall reimburse S&S for (1) its reasonable direct travel expenses including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees; (2) a travel time rate of fifty percent (50%) of the individual's current standard hourly rate; (3) a per diem rate of \$65.00 for weekdays and a \$110.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided); (4) a mileage charge based on the current Internal Revenue Service recommended rate per mile; and (5) all other reasonable direct expenses incurred in the performance of S&S's duties including courier services and documentation copying or production. These costs are excluded from the total fees amount described in Section 4.1 (a).
- (d) In the event the Organization fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies S&S has under this Agreement or otherwise, S&S shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services shall not relieve the Organization of its obligation to pay its outstanding invoices, including any applicable late charges.
- (e) S&S shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax S&S may be required to collect or pay upon the delivery of the Services described in this Agreement shall be paid by the Organization and are excluded from the prices listed in Schedule "ISA-2" and such sums (including the payment of the taxes) shall be due and payable to S&S within thirty (30) days of the Organization's receipt of an invoice. Any taxes levied after delivery of the Services described in this Agreement shall be paid by the Organization. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes.
- (f) All invoices should be paid via wire transfer or via check sent to the following address:

SYSTEMS & SOFTWARE, INC.
62130 Collections Center Drive
Chicago, IL 60693-0621

4.2 Change Orders

With respect to any proposed changes to the Services defined by this Agreement that do not materially impact the scope of either party's work effort required under this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change that, in the reasonable opinion of the other party, materially impacts the scope of the parties' work effort required under this Agreement, such as, but not limited to, changes in the allocation of the resources of the Organization and of S&S applied to a task, changes in completion schedules

for individual tasks or for overall implementation, and changes in staffing that require a party to provide additional work hours, the other party may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing, the Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. A sample change order is presented in Schedule "ISA-3".

ARTICLE V REMEDIES AND LIABILITY

5.1 Remedies and Liability

- (a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and S&S recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of S&S arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and S&S's liabilities will be limited as set forth in Section 6.3 and as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
- (c) EXCEPT FOR DAMAGES ARISING OUT OF (A) DAMAGE TO TANGIBLE PROPERTY, (B) INJURY OR DEATH TO PERSONS, OR (C) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF S&S, BOTH PARTIES AGREE THAT THE AGGREGATE LIABILITY OF S&S TO THE ORGANIZATION FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID BY THE ORGANIZATION TO S&S PURSUANT TO THE RELEVANT STATEMENT OF WORK.
- (d) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, AGGRAVATED DAMAGES, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY EITHER UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER BASED ON BREACH OF RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES.

5.2 **Intent**

The parties agree that the limitation of liability as set out in Section 5.1 above shall apply under any circumstances (including as a result of a default under this Agreement, a tort related claim or breach of contract). For the purposes of Section 5.1 only, a party relying on the limitation of liability shall be deemed to include that party's shareholders, directors, officers, employees, elected officials and affiliates.

5.3 **Remedies**

Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of S&S arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE VI
GENERAL

6.1 **Force Majeure**

Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of such party including, but not limited to, acts of God, acts of war or of the public enemy, riots, fire, flood, or other natural disaster, acts of government, strike, walkout, communication line or power failure, failure in operability or destruction of the Organization's computer (unless by reason of the negligence of a party to this Agreement) or failure or inoperability of any software other than the Software. Any applicable delivery schedule shall be extended by a period of time equal to the time lost because of any such delay.

6.2

Confidentiality

- (a) Duty Owed to the Organization -- S&S acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement or the performance of the Services. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, S&S agrees:
- (i) to maintain this information in confidence;
 - (ii) not to use this information other than in the course of this Agreement;
 - (iii) not to disclose or release such information except on a need-to-know only basis;
 - (iv) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of S&S; and
 - (v) to take all appropriate action, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with S&S, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.

6.3

Termination

- (a) Except for those terms that explicitly survive the expiration or termination of this Agreement, this Agreement shall expire upon the Completion of Services. The parties may at any time revive this Agreement so that it may be used in relation to a new Statement of Work.
- (b) If S&S should neglect to perform the Services properly or otherwise fail to comply with the requirements of this Agreement, the Organization must notify S&S in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, S&S must either correct the default at no additional cost to the Organization, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If S&S fails to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, the Organization may terminate the whole of this Agreement or the part of this Agreement relating to the provision of Services and in such case will be responsible for payment to S&S of only that part of the fee earned by S&S for those Services performed up to the time of communication of such notice of termination to S&S.

- (c) If the Organization should fail to comply with its obligations under this Agreement, S&S must notify the Organization in writing of such default (a “Default Notice”). Upon receipt of a Default Notice, the Organization must correct the default at no additional cost to S&S, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the Organization fails to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, S&S may terminate the whole of this Agreement and in such case the Organization will be responsible for payment to S&S of only that part of the fee earned by S&S for that part of the Services performed in accordance with this Agreement up to the time of communication of such notice of termination to the Organization.
- (d) The Organization may terminate this Agreement at its convenience upon ninety (90) days’ written notice. In the event of termination, S&S shall be paid for all services delivered and expenses incurred prior to the date of termination. No refunds will be provided for sums paid.
- (e) The termination of this Agreement prior to the Completion of Services shall result in the concurrent termination of the Support and Maintenance Agreement, Hosting Services Agreement and of the Software License Agreement. The termination or expiration of this Agreement following the Completion of Services shall not affect the rights of either party in either the Support and Maintenance Agreement, Hosting Services Agreement or the Software License Agreement.

6.4 Mediation

The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party’s right to seek injunctive relief at any time.

6.5 Addresses for Notice

All notices, demands, and requests, required to be given under this Implementation Services Agreement by either party to the other shall be in writing and delivered by hand, or by registered or certified mail, postage prepaid, to the respective parties at the following addresses,

or to such other address as may be given by a party to the other pursuant hereto:

In the case of S&S, to:

SYSTEMS & SOFTWARE, INC.
10 East Allen St, Suite 201
Winooski, VT 05404
Attention: Executive Vice President
Telephone: 802.865.1170

and in the case of the Organization, to:

City of Wilmington
Department of Finance
800 N. French Street, 5th Floor
Wilmington, DE 19801
Attention: J. Brett Taylor, Director of Finance
Telephone: 302.576.2401

Notice shall be deemed to have been given upon receipt thereof as to communications that are delivered by hand, or by registered or certified mail, and as to communications made by United States mail, on the third (3rd) day after mailing.

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.5.

6.6 Assignment

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.

6.7 Reorganizations

The Organization acknowledges that when a “Reorganization” occurs as that term is defined in the Software License Agreement, the same provisions related thereto shall apply to this Agreement. The application of a Reorganization may result in a change in the fees provided for in these provisions.

6.8 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of S&S by any

of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. The Organization acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

6.9 Section Headings

Section and other headings in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

6.10 Governing Law

This Agreement shall be governed by the laws of the State in which the Organization is located. All legal proceedings in connection with this Agreement shall be resolved by a court of competent jurisdiction located in New Castle County, Delaware.

6.11 Trial by Jury

The Organization and S&S hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of S&S in connection therewith or contemplated thereby.

6.12 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

6.13 Waiver

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the Agreement or by law despite such forbearance or notice.

6.14 Counterparts

This Agreement may be executed in counterparts (whether by facsimile or PDF signature or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

6.15 Survival

Section 4.1 and Articles V and VI shall survive the termination and/or expiration of this Agreement.

6.16 **Request for Proposals**

The Organization has conducted a competitive evaluation and has concluded such efforts with this negotiated Agreement (including any addenda hereto); therefore, this Agreement may serve as the basis for similar agreements whereby other entities may contract separately with S&S. The Organization agrees that S&S may disclose all or any portion of this Agreement to any of its current or prospective customers.

6.17 **Further Assurances**

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

6.18 **Term**

The initial term of this Agreement shall be for three (3) years commencing on the Effective Date (the "Initial Term"). After the Initial Term, the Organization may renew the Agreement for three (3) additional one-year terms.

6.19 **Insurance Coverage**

S&S shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Agreement as follows: workers' compensation as required by law and commercial general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers. S&S shall provide the Organization with a certificate of insurance evidencing the above-stated coverage and naming the Organization as an additional insured with respect to the commercial general liability coverage.

6.20 **Records of S&S**

S&S shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the Organization to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the Organization or its authorized representatives upon request; provided, however, that any such audit shall take place no more than once in any twelve-month period.

6.21 **Indemnity**

Subject to the limitation of liability herein, S&S shall defend, indemnify, and hold harmless the Organization, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities, and expenses resulting in property damage or personal injury,

including reasonable attorneys' fees, resulting from the negligent acts or omissions of S&S, its employees, agents, subcontractors, consultants, or subconsultants, in performing the services required under this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Software Implementation Services Agreement to be effective as of the date first written above.

SYSTEMS & SOFTWARE, INC.

By: _____
Name:
Title:

CITY OF WILMINGTON

By: _____
Name:
Title:

Schedule "ISA-1"
Statement of Work

[Under Separate Cover]

Schedule "ISA-2"
Fee Structure and Payment Schedule

The total fees payable under this Software Implementation Services Agreement are **\$2,707,950.00** which amount is not inclusive of those elements which are specifically excluded as described in the Software Implementation Services Agreement. The fees shall be paid in the following manner as delineated below:

Milestones:

Milestone No.	PHASE	Submitted	Milestone Description	Description and Acceptance Criteria	Deliverable	WIL	Milestone Amount \$	Milestone Payment \$\$		Month of Invoicing (estimated)
								15% Due on Signing	85% Due on Completion	
LI-1	Mobilization		License Fee	• One-time License Fee, due on contract signing.	0	0	\$241,915.00			contract
SM-1	Mobilization		Annual Support & Maintenance	• Annual Support & Maintenance (not due until year 2)	0	0	\$0.00			contract signing
HO-1	Mobilization		Annual Hosting	• Annual Hosting (not due until year 2).	0	0	\$0.00			contract
MS-1	Mobilization		Mobilization	• Upfront payment at contract signing of 15% of Services for mobilization of S&S resources, due on	0	0	\$62,125.00	\$62,125.00	\$0.00	contract signing
MOBILIZATION PHASE TOTAL							\$304,040.00	\$62,125.00	\$0.00	
MS-2	Initiate		PM (months 1-3)	• On-going Project Management responsibilities including: meetings, status reports, and schedule updates.	9	-	\$84,000.00	\$12,600.00	\$71,400.00	
MS-3	Initiate		PM (months 4-6)	• On-going Project Management (as above). • Billed at start of project month 4.	9	-	\$84,000.00	\$12,600.00	\$71,400.00	
MS-4	Initiate		PM (months 7-9)	• On-going Project Management (as above). • Billed at start of project month 7.	9	-	\$84,000.00	\$12,600.00	\$71,400.00	
MS-5	Initiate		PM (months 10-12)	• On-going Project Management (as above). • Billed at start of project month 10.	9	-	\$84,000.00	\$12,600.00	\$71,400.00	
MS-6	Initiate		PM (months 13-14)	• On-going Project Management (as above). • Billed at start of project month 13.	9	-	\$56,000.00	\$8,400.00	\$47,600.00	
MS-7	Initiate		Conduct Project Kick Off	• Meeting to launch project with both S&S and WIL project managers has occurred. • S&S will assign staff to the project team resource roles as described in the scope of work. • WIL and S&S Project Management will jointly provide overview for project stakeholders to educate them on the overall approach to the project, including the project charter.	1, 2, 6	1, 2, 6	\$110,950.00	\$16,642.50	\$94,307.50	
INITIATE PHASE TOTAL							\$502,950.00	\$75,442.50	\$427,507.50	
MS-8	Design		Prepare for Discovery Workshops	• The project infrastructure plan that details each environment's specifications and supporting networking, hardware and software requirements is complete. • Confirmed successful base solution installation, mapping, service order list, letters, policies & procedures, etc. • Completed Discovery Workshops Agenda & Schedule.	4, 5, 12	-	\$43,050.00	\$6,457.50	\$36,592.50	
MS-9	Design		Data Conversion - Planning & Mapping	• Approved Conversion Plan defining processes and tools that govern data mapping, data cleansing, technical design, development and testing. • WIL completed (initial) Data Mapping document between the legacy tables and the staging tables, as well as required target system data that are missing from legacy and the method for resolving the data gaps.	13	14	\$43,050.00	\$6,457.50	\$36,592.50	
MS-10	Design		Conduct Business Process Analysis Workshops	• Business Process Analysis Workshops completed as confirmed by attendance sign-in sheets.	18	-	\$213,500.00	\$32,025.00	\$181,475.00	
MS-11	Design		Finalize Business Process Analysis Documents	• Approved Business Process Analysis documents outlining components to be included in the Project going forward.	19	-	\$107,450.00	\$16,117.50	\$91,332.50	

MS-12	Design		Finalize Functional Design Specifications - Interfaces & Modifications	<ul style="list-style-type: none"> Completed Modification & Interface Analysis Workshops. Completed Functional Design Specifications for Interfaces & Modified Objects. Specifications based upon information obtained during Business Process Analysis workshops. Interface Specifications will, at a minimum, contain Interface Name, General Description, Data Fields and Definitions needed for the Interface, Triggers when applicable, High Level Error Handling guidelines. 	20, 21	-	\$85,575.00	\$12,836.25	\$72,738.75		
MS-13	Design		Finalize Training Plan	<ul style="list-style-type: none"> Completed Training Plan consisting of a training approach outlining learning goals and objectives for major target audiences. 	24	-	\$71,575.00	\$10,736.25	\$60,838.75		
MS-14	Design		Core Team Functional Training	<ul style="list-style-type: none"> Completed up to 10 business days of Core Team Functional Training, as confirmed by training session sign-in sheets, to educate the WIL Core Team on enQuesta functionality to prepare for assistance in writing and executing test scripts and begin practicing their new business process workflows in enQuesta Completed Testing Plan providing a roadmap for planned testing phases including relationship to other Project activities. S&S will provide standard functional test scripts. 	25, 27	-	\$133,000.00	\$19,950.00	\$113,050.00		
DESIGN PHASE TOTAL								\$697,200.00	\$104,580.00	\$592,620.00	
MS-15	Build		Functional Testing Prepared	<ul style="list-style-type: none"> S&S completed Functional Test Scripts. 	32		\$77,000.00	\$11,550.00	\$65,450.00		
MS-16	Build		Data Conversion #1 - Test Partial Conversion	<ul style="list-style-type: none"> Successful data conversion of data elements from the staging tables to the enQuesta solution. Delivery of conversion reports which includes kickoff data elements and counts of converted data for balancing against the legacy extract. 	34	-	\$102,200.00	\$15,330.00	\$86,870.00		
MS-17	Build		Data Conversion #2 - Test Full Conversion	<ul style="list-style-type: none"> Successful data conversion of data elements from the staging tables to the enQuesta solution. Delivery of conversion reports which includes kickoff data elements and counts of converted data for balancing against the legacy extract. 	35	-	\$122,850.00	\$18,427.50	\$104,422.50		
MS-18	Build		Data Conversion #3 - Test Full Conversion	<ul style="list-style-type: none"> Successful data conversion of data elements from the staging tables to the enQuesta solution. Delivery of conversion reports which includes kickoff data elements and counts of converted data for balancing against the legacy extract. 	36	-	\$122,850.00	\$18,427.50	\$104,422.50		
MS-19	Build		Developed Interfaces & Modifications	<ul style="list-style-type: none"> Completed enQuesta Administrator Training. S&S completed Integration Test case development. S&S will deliver completed code for the S&S responsible Interface Objects deemed within scope of the project. The program/executable code for each development object has been developed, successfully unit tested and delivered based on functional and technical specifications. Delivery of completed code for each Modified Object as defined in the approved specifications. The program/executable code for each development object has been developed, successfully unit tested and delivered based on the functional and technical specifications. 	30, 32, 37, 39		\$230,300.00	\$34,545.00	\$195,755.00		
MS-20	Build		Functional Testing Execution	<ul style="list-style-type: none"> Functional testing has been completed successfully. All priority 0 and 1 defects will be corrected unless otherwise mutually agreed to by S&S and WIL. 	43	43	\$81,900.00	\$12,285.00	\$69,615.00		
MS-21	Build		Integration Testing Execution	<ul style="list-style-type: none"> Integration testing has been completed successfully. All priority 0 and 1 defects will be corrected unless otherwise mutually agreed to by S&S and WIL. 	44	44	\$81,900.00	\$12,285.00	\$69,615.00		
BUILD PHASE TOTAL								\$819,000.00	\$122,850.00	\$696,150.00	

MS-22	Activate		Prepare for Cutover & UAT	<ul style="list-style-type: none"> End User Training Matrix complete Cutover Plan is created, prior to Simulation, which includes tasks, assigned resources and timeframes for Mock Go-live conversion legacy data extract, conversion and balancing. 	45	41	\$51,100.00	\$7,665.00	\$43,435.00		
MS-23	Activate		Completed Simulation Conversion & Mock Cutover	<ul style="list-style-type: none"> Approved successful "Mock" Cutover execution of conversion processes and programs for the entire data-set to be converted. UAT Test cases completed. 	47	48	\$81,900.00	\$12,285.00	\$69,615.00		
MS-24	Activate		Conduct End User Training	<ul style="list-style-type: none"> Completion of End User Training delivery conducted by S&S and confirmed by training session sign-in sheets. Deliver customized training materials for functionally unique critical WIL processes. Standard training materials will be used for typical configuration training or standard S&S processes. 	49	-	\$81,900.00	\$12,285.00	\$69,615.00		
MS-25	Activate		Go-Live	<ul style="list-style-type: none"> The Go-Live Cutover has been completed successfully. The S&S Total Solution is in use in day-to-day operations. All components of the S&S Total Solution, related third party applications, and related application databases are migrated to the Production Environment. 	52	52	\$153,475.00	\$23,021.25	\$130,453.75		
MS-26	Activate		Hosting Setup	<ul style="list-style-type: none"> Hosting Setup Fee. 	52	52	\$32,725.00	\$4,908.75	\$27,816.25		
MS-27	Activate		Final Acceptance & Transition to Support	<ul style="list-style-type: none"> S&S Solution in production use for two calendar months following Go-Live. S&S provided post production support. No open priority 0 or 1 defects, unless WIL and S&S mutually agree and remediation plan documented. 	53	53	\$85,575.00	\$12,836.25	\$72,738.75		
MS-28	Change Order	TBD							\$0.00		
ACTIVATE PHASE TOTAL							\$486,675.00	\$73,001.25	\$413,673.75		
TR			Travel (see below)	<ul style="list-style-type: none"> Travel expenses (estimated as 56 trips x \$2,500 / 			\$140,000.00			as incurred	
							Amount \$	Due on Signing	Remainder		
LI			Total License Fee				\$241,915.00	\$241,915.00	\$0.00		
MS			Total Services				\$2,567,950.00	\$375,873.75	\$2,192,076.25		
SM			Total Support &				\$0.00	\$0.00	\$0.00		
HO			Total Hosting				\$0.00	\$0.00	\$0.00		
TR			Total Travel				\$140,000.00	\$0.00	\$140,000.00		
PROJECT TOTAL							\$2,949,865.00	\$617,788.75	\$2,332,076.25		
Software Implementation Services Agreement (Total Services & Total Travel; from above)							\$2,707,950.00				
Software License Agreement (Total License Fee; from above)							\$241,915.00	see Software License Agreement			
Support and Maintenance Agreement (Total Support and Maintenance)							\$0.00	see Support and Maintenance Agreement			
Hosting Services Agreement (Total Hosting)							\$0.00	see schedule H-1 of Hosting Services Agreement			
COMBINED							\$2,949,865.00				

Notes:

- Milestone acceptance documents will be distributed to the City of Wilmington for approval containing the following language: The above work product has been reviewed by the client and the project management team; it meets the objectives for the enQuesta CIS Implementation. The completed work has been submitted and requires a response within 10 business days. If the time allowed lapses without an approving signature, the completed work is considered approved, the milestone invoice will be issued, and any modifications will be addressed through the Change Order process.
- Travel expenses will be billed as they are incurred.
- Client shall reimburse S&S for (a) its direct travel expenses including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees; (b) a per diem rate of \$65 for weekdays and a \$110.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided); (c) a mileage charge based on the current Internal Revenue Service recommended rate per mile; and (d) all other reasonable expenses incurred in the performance of S&S's duties for this project.
- Hosting fees for the Cloud-Based solution will be as indicated in the Hosting Agreement -

Schedule H-1.

- Travel costs and hosting/maintenance costs are not included in these milestones.

Schedule "ISA-3"
Sample Form Change Order

Please see a sample Change Order for [CUSTOMER] on the following pages.



[CUSTOMER]
enQuesta v6 Implementation
Project Change Order

Project Name:	enQuesta v6	Change Order:	CO-01
Requestor:	<[CUSTOMER] PM name>	Date Requested:	Mmm-dd-yyyy
Project Manager:	<S&S PM name>	Priority:	Low/Med/High
Date Created:	Mmm-dd-yyyy	Revision Date:	n/a
Title			

Summary of Business Requirements & Reason for Proposed Change

-

Proposed Resolution and Recommendation

S&S recommends the following:

-

Assumptions

-



[CUSTOMER]
enQuesta v6 Implementation
Project Change Order

Impact to Project Scope, Schedule, Costs, Deliverables and Identify Risks

Impact to Project Scope:

-

Impact to Project Schedule:

-
- Include a Gantt chart if project schedule is materially changing.

Impact to Project Costs:

- See 'Summarized Cost and Breakdown' section below.

Impact on existing Deliverables and list any new Deliverables:

- TBD on impact to existing deliverables.
- New milestones are included below.

The following risks have been mitigated with this change order:

-



[CUSTOMER]
enQuesta v6 Implementation
Project Change Order

Summarized Cost and Breakdown	Amount
Software License Cost	
Professional Services Cost	
Development Cost	
Subtotal	
Year 1 Maintenance & Support	
Year 1 Costs	

MS #	Milestone Name	Milestone Acceptance Criteria	Amount
MS-01			
MS-02			
MS-03			
MS-04			



[CUSTOMER]
enQuesta v6 Implementation
Project Change Order

Terms and Conditions

1. The change order rate identified in Section 4.1 – Change Order Rates of Schedule ISA-1 (SOW) to the Information Systems Agreement, will apply to this Change Order.
2. This Change Order has been submitted, assessed, and approved by the Project Management Team and the Executive Sponsors. Signed Approval of this document indicates it will be executed as described.
3. All year 1, aside from Maintenance and Support, will be invoiced based upon the defined Milestone Acceptance Criteria reflected above.
4. Year 1 Maintenance & Support, if applicable, will be prorated from the Change Order signing date to your Support renewal date.

Approval

Signed: _____ Date: _____
<Client> Executive Sponsor: < [CUSTOMER] Sponsor name>

Signed: _____ Date: _____
<Client> Project Manager: <[CUSTOMER] PM name>

Signed: _____ Date: _____
S&S Executive Sponsor: <S&S Sponsor name>

Signed: _____ Date: _____
S&S Project Manager: <S&S PM name>

Signed: _____ Date: _____
S&S EVP: Julie Hextell

SUPPORT AND MAINTENANCE AGREEMENT

THIS SUPPORT AND MAINTENANCE AGREEMENT made as of November 1, 2023 (the “Start Date”).

BETWEEN:

SYSTEMS & SOFTWARE, INC.
 (“S&S”)

- and -

City of Wilmington
 (the “Organization”)

RECITALS

1. S&S owns the Software which has been licensed to the Organization pursuant to a Software License Agreement dated November 1, 2023;
2. The Organization wishes to receive support and maintenance services related to the Software; and
3. S&S shall provide the support and maintenance services related to the Software.

NOW THEREFORE, in consideration of the mutual covenants set out in this support and maintenance agreement (the “Support and Maintenance Agreement”) and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. Unless otherwise defined herein, all defined terms used herein shall have the meaning ascribed to them in the Software License Agreement (the “Software License Agreement”).
2. This Support and Maintenance Agreement is the exclusive statement of the entire support and maintenance agreement between S&S and the Organization. The parties agree that any previous agreement or terms in an agreement that provided support and maintenance services similar to those provided under this Support and Maintenance Agreement have either expired or been terminated under their own terms.
3. S&S shall provide software support primarily via telephone and electronic mail in addition to site visits only when necessary. The support services will be provided only during the hours of operation as described in Schedule “SMA-3” hereto and which are in effect as of the Start Date, as such services may, at S&S’s sole discretion, be modified or supplemented from time to time. To enable S&S to provide effective support, the Organization will

establish auto remote access procedures compatible with S&S's then current practices which may be revised over time.

4. The provision of support services under this Support and Maintenance Agreement shall start on the Start Date.
5. In consideration for the support services specified in this Support and Maintenance Agreement, the Organization shall pay the "Support and Maintenance Fee" as detailed in Schedule "SMA-2" below. The Support and Maintenance Fee will be billed annually in advance beginning on the Start Date and thereafter on the anniversary of the Start Date or on an alternative date mutually agreed to by both parties. If the Organization would like to match the invoicing of the Support and Maintenance Fee to its fiscal year or any other period, it may request, during the initial term of this Support and Maintenance Agreement that S&S issue a prorated invoice for the portion remaining during the initial term. S&S may change the Support and Maintenance Fee from time to time in relation to each renewal term but the Organization shall only be billed once per year. In addition to the above, where the Organization purchases additional or different licenses related to the S&S Software, additional Support and Maintenance Fees may be charged by S&S at the time of purchase of such software license(s) and incorporate such increase(s) in any subsequent Support and Maintenance Fee payments previously agreed to.
6. In addition to the Support and Maintenance Fee, the Organization shall reimburse S&S for its direct expenses in providing support services ("Billable Expenses") pursuant to this Support and Maintenance Agreement which include as of the Start Date:
 - (a) courier services, photocopying, faxing, long distance phone calls and reproduction services,
 - (b) all direct travel expenses including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees; a travel time rate of fifty percent (50%) of the individual's current standard hourly rate; a per diem rate of \$65.00 for week days and a \$110.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided); and a mileage charge consistent with the Internal Revenue Service recommended rate per mile,
 - (c) and all other reasonable direct expenses incurred in the performance of S&S's duties hereunder.

S&S may update its reimbursement policies from time to time, in which case such updated policies shall apply for purposes of this Support and Maintenance Agreement, provided that such updated reimbursement policies must generally apply to all clients of S&S.

7. S&S shall supply all maintenance Major Releases and Minor Releases to the Organization at no additional charge provided all outstanding Support and Maintenance Fees have been paid.
8. Upgrades are Major Releases of the Software as defined in the Software License Agreement. Upgrades may require additional services to be performed by S&S outside of the scope of those services provided by S&S under this Support and Maintenance

Agreement including professional services for the installation and implementation of the Upgrade (if applicable) and additional training. These additional services will be subject to a mutual scoping exercise between S&S and the Organization whereby an additional scope of work will be developed, negotiated and signed by both parties before work commences. S&S's then-prevailing terms, pricing and hourly rates shall apply.

9. Updates are defined as minor code updates to the Software, such as providing bug fixes or minor modifications. All Updates of the Software will be made available to the Organization at no additional charge provided all outstanding Support and Maintenance Fees have been paid.
10. S&S shall not be required to perform corrective maintenance as part of its support and maintenance services with respect to Software malfunctions caused by:
 - (a) The Organization's modifications to the Software unless performed at the direction of S&S;
 - (b) The Organization's failure to use updates, enhancements or program error corrections;
 - (c) Failure to use the Software in accordance with this Support and Maintenance Agreement; or
 - (d) Actions beyond S&S' reasonable span of control with respect to the Organization's actions which alter the turnkey implementation environment, or cause hardware or Third Party Software malfunctions.
11. In the event the Organization requests document, reporting and/or interface creation or changes, S&S will be entitled to increase the Support and Maintenance Fee by no less than twenty-five percent (25%) per request per year going forward in order to allow S&S to maintain these changes through each Release of the Software.
12. All payments hereunder shall be in U.S. dollars and shall be net of any taxes, tariffs or other governmental charges. S&S shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax S&S may be required to collect or pay upon the sale, use or delivery of the support and maintenance services described in this Support and Maintenance Agreement shall be paid by the Organization and such sums shall be due and payable to S&S upon receipt of an invoice therefore. Any taxes levied in relation to the services required for a Release shall be paid by the Organization. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes.
13. The initial term of this Support and Maintenance Agreement shall be for three (3) years beginning on the Start Date (the "Initial Term"). After the Initial Term, the Organization's may renew this Support and Maintenance Agreement for three (3) additional one-year terms. For each renewal term, the Organization shall pay the then prevailing Support and Maintenance Fee in advance for each year of the Support and Maintenance Agreement. The termination of this Support and Maintenance Agreement by the Organization shall not affect the License or the Software License Agreement. S&S shall neither refund any Support and Maintenance Fees nor any Billable Expenses if this Support and Maintenance

Agreement is terminated. The Organization acknowledges that if this Support and Maintenance Agreement is terminated, then it will not be eligible to receive the benefits of this Support and Maintenance Agreement including the right to Releases or to access the source code in escrow upon the occurrence of any Event of Default.

14. Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by S&S in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with S&S, and the Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.

15. Termination by S&S:

a) S&S shall have the right to terminate this Support and Maintenance Agreement immediately if the Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with the Software License Agreement.

b) In the event the Organization fails to pay all or any portion of an undisputed invoice on or before sixty (60) days after the date it becomes due, S&S shall have the option to suspend or terminate this Support and Maintenance Agreement. Suspension or termination shall not relieve the Organization of its obligation to pay its outstanding invoices. The Organization will be required to pay S&S the entire Support and Maintenance Fees for the period of suspension prior to reinstatement of support and maintenance services.

16. Termination by the Organization:

If S&S should neglect to perform the support and maintenance services properly or otherwise fail to comply with the requirements of this Support and Maintenance Agreement, the Organization must notify S&S in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, S&S must either correct the default, to the reasonable satisfaction of the Organization at no additional cost to the Organization or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If S&S fails to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, the Organization may terminate the whole of this Support and Maintenance Agreement and in such case, the Organization will not be responsible for payment to S&S of any further Support and Maintenance Fees, except for those that may be due as of the time of communication of such notice of termination to S&S. At the Organization's election, termination of this Support and Maintenance

Agreement shall result in concurrent termination of the Hosting Services Agreement, Software License Agreement, and the Software Implementation Services Agreement.

The Organization may terminate this Agreement at its convenience upon ninety (90) days' notice. In the event of termination, S&S shall be paid for all expenses incurred and services delivered. No refunds will be provided for sums paid for support and maintenance services.

17. All notices, demands, and requests, required to be given under this Support and Maintenance Agreement by either party to the other shall be in writing and delivered by hand, or by registered or certified mail, postage prepaid, to the respective parties at the following addresses, or to such other address as may be given by a party to the other pursuant hereto:

In the case of S&S, to:

SYSTEMS & SOFTWARE, INC.
10 East Allen St, Suite 201
Winooski, VT 05404
Attention: Executive Vice President
Telephone: 802.865.1170

and in the case of the Organization, to:

City of Wilmington
Department of Finance
800 N. French Street, 5th Floor
Wilmington, DE 19801
Attention: J. Brett Taylor, Director of Finance
Telephone: 302.576.2401
jbtaylor@wilmingtonde.gov

Notice shall be deemed to have been given upon receipt thereof as to communications that are delivered by hand, or by registered or certified mail, and as to communications made by United States mail, on the third (3rd) day after mailing.

18. Either party's lack of enforcement of any provision in this Support and Maintenance Agreement in the event of a breach by the other shall not be construed to be a waiver of any such provision or the non-breaching party may elect to enforce any such provision in the event of any repeated or continuing breach by the other.
19. The parties agree that the terms and conditions contained herein shall prevail notwithstanding any variations on any orders, e-mails or other correspondence submitted by either party.
20. The particular provisions of this Support and Maintenance Agreement shall be deemed confidential in nature and neither the Organization nor S&S shall divulge any of its

provisions as set forth herein to any third party except as may be required by law.

21. Remedies and Liability:

- (a) Termination of this Support and Maintenance Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and S&S recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of S&S arising from this Support and Maintenance Agreement. The parties agree that in all such circumstances the Organization's remedies and S&S's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Support and Maintenance Agreement.
- (c) EXCEPT FOR DAMAGES ARISING OUT OF (A) DAMAGE TO TANGIBLE PROPERTY, (B) INJURY OR DEATH TO PERSONS, OR (C) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF S&S, THE AGGREGATE LIABILITY OF S&S TO THE ORGANIZATION FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, UNDER OR RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES ACTUALLY PAID BY THE ORGANIZATION TO S&S UNDER THIS SUPPORT AND MAINTENANCE AGREEMENT DURING THE THEN-CURRENT TERM (AND IN NO EVENT BEING GREATER THAN 12 MONTHS) OF THE SUPPORT AND MAINTENANCE AGREEMENT UP TO AND INCLUDING THE DATE OF TERMINATION.
- (d) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, AGGRAVATED DAMAGES, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY EITHER UNDER OR RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT OR ITS SUBJECT MATTER, WHETHER BASED ON BREACH OF CONTRACT, RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

19. The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Support and Maintenance Agreement shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.
20. Where remedies are expressly afforded by this Support and Maintenance Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of S&S arising out of or in connection with this Support and Maintenance Agreement, notwithstanding any remedy otherwise available at law or in equity.
21. So long as the Organization has an active Support and Maintenance Agreement in place, the Organization may, at the Organization's option and expense, enter into an escrow arrangement with S&S. Upon the Organization's request:
 - (i) The Organization shall be presented with the standard escrow beneficiary enrollment document for participation in S&S's source code escrow arrangement with an escrow agent (the "Escrow Arrangement").
 - (ii) By entering into this Escrow Arrangement, the Organization shall have all the rights as stipulated in the escrow agreement together with those rights which are more specifically outlined in Schedule "A", Escrow Terms, which shall form part of this Support and Maintenance Agreement in accordance with the terms of Schedule "SMA-1".
22. This Support and Maintenance Agreement shall be governed by the laws of the State in which the Organization is located.
23. This Support and Maintenance Agreement may not be assigned by the Organization unless, concurrently with any such assignment, the Organization assigns its rights under, and complies with the provisions of the Software License Agreement.
24. This Support and Maintenance Agreement shall be binding upon the successors and assigns of the parties and inure to the benefit of the successors and permitted assigns of the parties.
25. The invalidity or unenforceability of any provision or covenant contained in this Support and Maintenance Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.
26. This Support and Maintenance Agreement may be executed in counterparts (whether by PDF format via e-mail or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.
27. S&S shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Support and Maintenance Agreement as follows: workers' compensation as required by law and commercial general liability coverage for personal

injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers. S&S shall provide the Organization with a certificate of insurance evidencing the above-stated coverage and naming the Organization as an additional insured with respect to the commercial general liability coverage.

28. S&S shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Support and Maintenance Agreement and such other records as may be deemed necessary by the Organization to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the Organization or its authorized representatives upon request; provided, however, that any such audit shall take place no more than once in any twelve-month period.

29. Subject to the limitation of liability herein, S&S shall defend, indemnify, and hold harmless the Organization, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities, and expenses resulting in property damage or personal injury, including reasonable attorneys' fees, resulting from the negligent acts or omissions of S&S, its employees, agents, subcontractors, consultants, or subconsultants, in performing the services required under this Support and Maintenance Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Support and Maintenance Agreement to be effective as of the date first written above.

SYSTEMS & SOFTWARE, INC.

By: _____
Name:
Title:

CITY OF WILMINGTON

By: _____
Name:
Title:

Schedule "SMA-1"

Escrow Terms

Where the Organization has agreed to be a beneficiary of the Escrow Agreement (as defined below) by entering into the Escrow Arrangement, the following sections shall apply to the Support and Maintenance Agreement upon the execution of the Escrow Arrangement.

- (a) S&S and Lincoln-Parry (the "**Escrow Agent**") have entered into an escrow agreement (the "**Escrow Agreement**"). The Source Code is provided by S&S to the Escrow Agent pursuant to the terms of this Agreement. The Organization has a right to the Source Code pursuant to the provisions of this Schedule and the Escrow Agreement as it has agreed to participate in the Escrow Arrangement and is a beneficiary because the Organization has completed the Escrow Arrangement document. S&S agrees that if an "Event of Default" occurs, then the Organization shall have the right to one copy of the most current version of the Source Code for the affected Software and associated Documentation.
- (b) An **Event of Default** is defined as and shall be deemed to have occurred if S&S: (1) ceases to market or make available maintenance or support services for the Software during a period in which the Organization is entitled to receive or to purchase, or is receiving or purchasing, such maintenance and support and S&S has not promptly cured such failure despite the Organization's demand that S&S make available or perform such maintenance and support, (2) becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings, and it continues to be subject to bankruptcy proceedings ninety (90) days following either its application into bankruptcy protection or the commencement of such proceedings, or (3) has transferred all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the obligations of S&S set forth in this Agreement.
- (c) S&S will promptly and continuously update and supplement the Source Code as necessary with all corrections, improvements, updates, releases, or other changes developed for the Software and Documentation. Such Source Code shall be in a form suitable for reproduction and use and shall consist of a full source language statement of the program or programs comprising the Software.
- (d) The governing License for the Software includes the right to use Source Code received under this Schedule as necessary to modify, maintain, and update the Software but for no other purposes outside the normal business operations of the Organization.
- (e) The termination of the Support and Maintenance Agreement shall immediately end the Organization's rights as a beneficiary under the Escrow Agreement and Escrow Arrangement, as applicable.
- (f) This Schedule "SMA-1" shall form part of the Support and Maintenance

Agreement only where an Escrow Arrangement is entered into by the parties. The Escrow Agreement provides that either the Escrow Agent or S&S will annually send notices to the Organization of the Escrow Agent's continued possession of the Source Code and will also state the activity related to the Source Code provided to the Escrow Agent by S&S for the previous year. The Escrow Agreement cannot be terminated without the consent of each beneficiary (licensee) of the Escrow Agreement.

Schedule SMA-2
Annual Support and Maintenance Fee

The total Support and Maintenance Fees outlined for year 1-6.

Maintenance enQuesta

Year 1	\$0
Year 2	\$101,558
Year 3	\$104,604
Year 4	\$107,742
Year 5	\$110,975
Year 6	\$64,304

Maintenance Capricorn

Year 1	\$0
Year 2	\$46,250
Year 3	\$47,638
Year 4	\$49,067
Year 5	\$50,539
Year 6	\$52,055

*Hosting fees are outlined in the Hosting Services Agreement

Schedule SMA-3
Standard Support and Maintenance Services – Standard Guidelines

[Under Separate Cover]

Hosting Service Agreement

This **Hosting Service Agreement** (the "**Agreement**"), is entered into on November 1, 2023 (the "**Effective Date**") by and between the City of Wilmington ("**Customer**") and Systems & Software, Inc. ("**S&S**").

WHEREAS, concurrently with the execution of this Hosting Agreement, the existing Software Implementation Services Agreement concurrently entered between the parties with respect of the Software remain intact with no changes; and

WHEREAS, S&S wishes to offer the use of, and the Customer wishes to use, the Hosting Services for the Software on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this Hosting Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. Definitions

The following terms shall have the meaning set out below, all other capitalized terms not otherwise defined in this Section shall have the meaning set forth in the Software Implementation Services Agreement :

- (a) "**Annual Hosting Fees**" means the annual Hosting fees set out in Schedule "H-1" of this Agreement.
- (b) "**Applicable Data Protection Law**" means all data privacy or data protection laws or regulations globally that apply to the Processing of Personal Information under this Agreement and Oracle's Data Processing Agreement referred to in Schedule "H-4", which may include Applicable European Data Protection Law.
- (c) "**Applicable European Data Protection Law**" means (i) the EU General Data Protection Regulation EU/2016/679, as supplemented by applicable EU Member State law and as incorporated into the EEA Agreement; (ii) the Swiss Federal Act of 19 June 1992 on Data Protection, as amended; and (iii) the UK Data Protection Act 2018.
- (d) "**Change Order**" means any written and mutually approved and signed Documentation between Customer and S&S evidencing their agreement to change particular aspects of this Agreement.
- (e) "**Completion of Services**" means the Professional Services are complete and shall be deemed to have occurred on the date which Customer commences using the Hosting Services.
- (f) "**Confidential Information**" means, with respect to a party hereto, all information or material which: is marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking,. Confidential Information of S&S shall include, without limitation, the Software, the Service Specifications, the terms and pricing under this Agreement, and any information with respect to the Hosting Services that S&S may provide to Customer from time to time, including without limitation, all information disclosed by S&S relating to the security of its facilities, computer systems and products. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party as evidenced by its written records; (iii) is lawfully disclosed to the receiving party by a third party without restriction on the disclosure; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information and which such independent development can be established using evidence that would be acceptable to a court of competent jurisdiction.
- (g) "**Data**" means all data, including without limitation, all Personal Information, software, text, images, audio, video, photographs, and other content and material, in any format, that is provided by or on behalf of Customer to S&S or its service provider and all other content and material, in any format, transmitted, posted, received or created through Customer's use of the Hosting Services or the Software.
- (h) "**Fees**" means the Annual Hosting Fees and Professional Services Fees pertaining to the Hosting Services.

- (i) **“Hosting Services”** means the services to be provided by or on behalf of S&S under this Agreement that includes hosting, monitoring, and operating the Software on hardware and related equipment at a site owned or controlled by S&S’ service providers and the delivery of exclusive access (via point to point virtual private network connection (VPN) or other secure connection) to Customer to use the Software pursuant to the Software Implementation Services Agreement and Section 2 of this Agreement. Hosting Services shall also include storing all Data entered and maintained by Users.
- (j) **“Managed Services”** means those additional managed services to be provided by S&S to Customer as described in Section 7(h).
- (k) **“Oracle”** means Oracle America, Inc.
- (l) **“Personal Information”** shall have the same meaning as the term “personal data”, “personally identifiable information (PII)” or the equivalent term under Applicable Data Protection Law.
- (m) **“Professional Service(s)”** means the one time professional services to be performed by S&S to configure, set-up, and implement the Software at the hosting site in accordance with this Agreement and as more particularly set out in Schedule “H-2”.
- (n) **“Professional Service(s) Fees”** means the professional service(s) fees set out in Schedule “H-1” of this Agreement.
- (o) **“Service Specifications”** means the following documents referenced in Schedule H-4, as applicable to the Hosting Services under this Agreement: (a) the Oracle Cloud Hosting and Delivery Policies, the Program Documentation, the Oracle service descriptions, and the Data Processing Agreement described in this Agreement; (b) Oracle’s privacy policies; and (c) any other Oracle documents that are referenced in or incorporated into Your order. The following do not apply to any non-Cloud Oracle services, such as professional services: the Oracle Cloud Hosting and Delivery Policies, Program Documentation, and the Data Processing Agreement.
- (p) **“Software”** means the commercial off the shelf (“COTS”) version of enQuesta software licensed to Customer pursuant to the Software Implementation Services Agreement .
- (q) **“SLA”** means the Service Level Agreement attached to this Agreement as Schedule “H-3”.
- (r) **“Software Implementation Services Agreement”** means the Software Implementation Services Agreement entered into between Customer and S&S dated November 1, 2023 that set outs the terms and conditions of the license to use the Software and Third-Party Software provided by S&S to Customer.
- (s) **“Support Services”** means those support services provided by S&S pursuant to the terms and conditions of the Support and Maintenance Services Agreement entered into between Customer and S&S dated November 1, 2023.
- (t) **“Third Party Components”** means any third-party telecommunications, energy/utility transportation, managed facilities and/or software applications and services that S&S or its service providers has licensed or purchased and provided access to or otherwise made available to Customer as part of the Hosting Services.
- (u) **“Users”** means employees, contractors, agents or other parties affiliated with the Customer who have the right to use and have access to the Software either on Customer site or remotely to support the Customer’s licensed use of the Software.

2. Authorization

Subject to the terms and conditions of this Agreement, including without limitation, payment by Customer of the Fees, S&S hereby grants to Customer a personal, non-exclusive, non-transferable limited right during the Term to allow Users to access and use the Hosting Services solely in connection with its use of the Software for Customer’s internal business purposes as permitted pursuant to the Software Implementation Services Agreement.

3. Fees

In consideration of receiving the Hosting Services and the Professional Services, Customer agrees to pay to S&S the Fees as described in this Section 3 and Schedule “H-1” in accordance with the payment terms set out in Schedule “H-1” and all sums paid are non-refundable.

The Annual Hosting Fees, Professional Services Fees, and any other Fees set out in this Agreement are exclusive

of taxes. Customer agrees to pay all foreign, federal, state, or local income taxes, value added taxes, use, personal, property sales and tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on S&S's net income and land).

4. Hosting Services Term

Unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years (the "**Initial Term**"), with an option by Customer to renew for three additional one-year terms (each a "**Renewal Term**"). The Initial Term and Renewal Term(s) shall collectively be referred to as the "**Term**". After the Initial Term of this Agreement, S&S and customer must agree to pricing within 60 days of the end of the then-current term in order for Customer to exercise its right to each Renewal Term.

5. Restrictions on Use

(a) Customer shall not, and shall not cause or permit others to:

- (i) give away, rent, lease or otherwise sell, re-sell, sublicense, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, make available the Hosting Services to any third party, or transfer the license rights granted under this Agreement or otherwise use the Hosting Services or the Software except as expressly permitted by this Agreement and the Software Implementation Services Agreement without the prior written consent of S&S;
- (ii) modify, create derivative works of, disassemble, reverse engineer, reproduce, republish, download, or copy the Documentation or any part of the Hosting Services (including data structures or similar materials produced by programs;
- (iii) frame or mirror any part or content of the Hosting Services, other than framing on Customer's internal networks or otherwise for Customer's own internal business purposes;
- (iv) transmit, upload, post, distribute, store or otherwise publish, through use of the Hosting Services, any data, material or information that: (A) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (B) is false, threatening, defamatory, libelous, harassing, profane, is an invasion of privacy or violates privacy rights, offensive, obscene or harmful, promotes bigotry, racism, hatred or harm; (C) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third-party; (D) violates any law, statute, ordinance or regulation; or (E) includes unsolicited bulk e-mails, junk mail, spam or chain letters, advertisements or solicitations;
- (v) interfere with or disrupt services or networks connected to the system used to provide the Hosting Services and shall not attempt to gain unauthorized access to the Hosting Services or such services or networks connected to the system used to provide the Hosting Services;
- (vi) (A) perform any benchmarking or availability testing of the Hosting Services or (B) disclose the results of using the Hosting Services for the purposes of monitoring its availability, benchmarking or competitive analysis to any third party;
- (vii) perform or disclose any performance or vulnerability testing of the Hosting Services without S&S prior written approval, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Hosting Services;
- (viii) use the Hosting Services to harass any person, cause damage or injury to any person or property, or to perform cyber currency or crypto currency mining; or
- (ix) access or use the Hosting Services to build or support, directly or indirectly, products or services competitive to the Software, Hosting Services and Third Party Components.

- (b) In addition to its termination rights under Section 11, S&S may restrict or limit Customer's access to the Hosting Services if S&S determines that Customer has engaged in (whether knowingly or unknowingly) any prohibited conduct described herein. In addition to and without limiting the foregoing, S&S reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Customer in connection with its use of the Hosting Services that S&S determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to S&S or its service providers' network, business or other Customers.

6. Hosting Services

- (a) S&S shall provide the facilities, equipment, and software to deliver the Hosting Services. S&S shall have the right to manage all resources used in providing the Hosting Services, as S&S deems appropriate.
- (b) S&S shall host and provide access to the Software Users, subject to scheduled periods of non-availability as described in Schedule "H-3".
- (c) S&S reserves the right to have commercially reasonable additional User security criteria that may be applied to Users prior to their ability to have access to the Software. S&S shall inform Customer of such criteria but S&S shall be free to implement such criteria at any time without prior written warning to the Customer and/or to Users. Where Users do not accept such and/or agree to such criteria, S&S reserves its rights to not grant to such Users access to the Software. S&S reserves its rights to restrict access to the Software to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Software.
- (d) The Customer, not S&S, shall be responsible for creating and maintaining all User account information and for performing all other application level system administration functions that are available within the Software.
- (e) S&S shall comply with the terms and conditions regarding access and use of Data as set out in Section 13 of this Agreement.
- (f) Customer acknowledges that in order to provide the Hosting Services, Customer may be required to purchase access to Third Party Components. Customer further acknowledges that the availability of such Third Party Components is based solely on the best information available to S&S and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by S&S to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of S&S's control, then (a) S&S shall not be in breach hereof or otherwise liable for any failure or inability to provide the Hosting Services as a result of such unavailability of any Third Party Components; and (b) may be required to change or replace the applicable Third Party Components or otherwise attempt to mitigate the impact of the such unavailability of Third Party Components.
- (g) **Additional Terms and Conditions.** Customer agrees, and shall cause its Users to agree to be bound by and comply with the additional terms and conditions relating to Third Party Components, if any attached to this Agreement as Schedule "H-4", as may be amended from time to time by S&S, in its sole discretion, upon written notice to Customer.
- (h) The Service Specifications describe and govern the Hosting Services. During the Term, S&S may update the Hosting Services and Service Specifications to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Components (as described in Section 6(f) above). If any of the terms and conditions of S&S' agreement with its third party service provider or any other provider or licensor of Third Party Components are modified by such provider, S&S may modify the terms and conditions of this Agreement effective immediately upon written notice to Customer. If any such modification, change or replacement of the original Third Party Components pursuant to Section 6(f) includes a material price increase with respect to the Hosting Services enabled by such Third Party Components or materially reduces the level of performance, functionality, security or availability of the

Hosting Services during the then current term, Customer may terminate this Agreement by providing written notice to S&S within thirty (30) days after Customer's receipt of notification of such material price increase or discovery of such impairment. For clarity, Customer and S&S shall agree in writing to any transition services requested by Customer and the associated transition services fees payable by Customer to S&S in the event of such termination.

- (i) **Oracle Programs.** S&S, as authorized distributor of certain Oracle software offerings ("Oracle Programs"), provides the Oracle Programs set out in Schedule "H-5" to Customer for its use in accordance with the terms and conditions set out in the attached Schedule "H-5".

7. Responsibilities

- (a) **Cooperation by Customer.** The Customer acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Customer and its staff and agrees to act reasonably and cooperate fully with the S&S to achieve the Completion of Services related to any Professional Services supplied by S&S. To enable S&S to provide effective Support Services, the Customer will establish secure remote access to S&S based on mutually agreed to remote access procedures.
- (b) **Project Manager.** The Customer shall appoint a project manager who shall work closely with S&S to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the Customer and their cooperation with and participation in such process during any Professional Services.
- (c) **Customer Equipment.** Customer agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all equipment, hardware, onsite network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Customer's facilities required for Users to access and use the Hosted Services. S&S shall not be responsible for the operation of any Internet, network or other communication services. The Customer further acknowledges that the operation of the Hosting Services requires the Customer's and Users' hardware to be of sufficient quality, condition and repair, and the Customer agrees to and/or ensure that Users' maintain their applicable hardware in the appropriate quality, condition and repair at the Customer's sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Services related to any Professional Services supplied by S&S.
- (d) **Passwords.** Customer agrees to comply with all S&S and its service providers' security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and all passwords and user IDs assigned to it its Users secret and confidential. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customers or its Users' passwords and user IDs, as well as any obligation that may result from such use. Customer agrees to notify S&S in writing if it believes that a password has been stolen or might otherwise be misused. Customer agrees to notify S&S immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Customer related to the Hosting Services.
- (e) **Users.** The Customer is responsible for: (i) the actions of Users using the Hosting Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by S&S from time to time for Users; and (iii) informing S&S of any information about Users' actions that may affect either the Software or third party data contained in the Software or used by the Hosting Services, or S&S's ability to provide Hosting Services as contemplated by this Agreement.
- (f) **Compliance with Laws.** Customer represents and warrants to S&S that it and its Users will at all times be in compliance with all applicable local, state, and federal and laws and regulations including, but not limited to, those laws regarding defamation, libel, harm to reputation, privacy, security, data protection, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition, exports, and other situations which could generate liability.
- (g) **Export.** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Hosting Services. Such export laws govern use of the Hosting Services (including

technical data) and any Hosting Services deliverables provided under this Agreement, and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations, restrictions on exports including the U.S. Export Administration Regulations, end-user, end use and destination restrictions by Canadian, U.S. and other governments related to S&S and its service provider's products, services and technologies). Customer agrees that no data, information, software programs and/or materials resulting from the Hosting Services (or direct product thereof) will be exported, directly or indirectly, in violation of export laws and regulations of the United States and any other relevant local export laws and regulations applicable to the Services (including technical data), or will be used for any purpose prohibited by these laws, including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology. Customer acknowledges that the Hosting Services are designed with capabilities for Customer and its Users to access the Hosting Services without regard to geographic location and to transfer or otherwise move the Data between the Hosting Services and other locations such as User workstations. Customer is solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of the Data.

(h) **Managed Services.** S&S shall provide the Managed Services in accordance with accepted industry standards. Please see the table below for additional information on other division of responsibilities:

Item	Notes	Responsibility
Power Supply	All data center infrastructure is backed by redundant power sources and maintain generator backups in case of widespread electrical outage.	S&S
Internet Feeds & Networking at the Hosting Facility	All data center infrastructure is backed by high speed redundant network and internet connectivity.	S&S
Internet Feeds & Networking at the Customer Site	The Customer is responsible for monitoring and maintaining network and internet connectivity at the customer site relating to the hosted environment. For general usage, 10 to 20 Mbps upload/download dedicated to enQuesta throughput will meet or exceed the needs of most customers.	Customer
Disk Failover in Data Center	Multiple copies of data are stored redundantly across multiple storage servers with built-in repair mechanisms.	S&S
On-Premises (Customer) Network	Set-up and maintenance of all network components, including firewall configuration and network connectivity.	Customer
VPN Tunnels	For all hosted systems, an IPsec VPN tunnel is required to provide secure connectivity between the customer and the cloud hosting environment. The hosting environment tunnel is to be a co-managed; each party is responsible for notifying each other in the event of any changes that may require any type of coordination.	Customer & S&S
Back-Ups	Daily backups occur each evening and are retained for 5 business days. The Recovery Point Objective (RPO) for enQuesta is to recover from the most recent of these evening backups to minimize data loss. Selecting the Data Guard option makes your Production RPO point-of-failure (a.k.a. real-time). RTO for enQuesta is 12 hours. Often recovery time is 4 hours or less, but this is dependent on the type of failure that may have occurred. Complete server and data backups are taken at a 24 hour interval and replicated to a different Oracle data center facility should any type of backup ever be required. This back-up can be	S&S

	made available to the Customer at any point. Higher frequency back-ups may be requested at the then available S&S rates.	
Disaster Recovery	Set-up, maintenance and restoration from backups – typical recovery time is less than 24 hours for enQuesta production – extreme cases can take up to 72 hours for enQuesta production. The number one priority will be enQuesta, once it's up, the same timelines would then apply to Capricorn & enQuesta Link.	S&S
Operating System Maintenance	S&S is responsible for the following Operating System Level changes: General O/S maintenance, O/S-level application configuration, and systematic semi-yearly O/S patching.	S&S
Database Maintenance	S&S is responsible for Database maintenance and tuning as required by the enQuesta Software. Please note that this does not include manual data manipulation for ad-hoc billable projects or corrective measures in the case of Customer error.	S&S
Workstations	The Customer is responsible for the management and maintenance of all workstation, PCs, devices used to connect to the enQuesta Software.	Customer
Any Hardware On-Premise (e.g Kiosks, Handhelds Scanners, etc)	The Customer is responsible for the configuration, management and maintenance of any additional hardware installed on-premises.	Customer
Printers	Customer is responsible for all printer configuration and support of printers (beyond the six (6) that are included as part of the original contract).	Customer
System Monitoring	Alerting of critical instances: Tablespace Capacity, JBOSS, Back-Up Completed/Failed, Hosting Services Up/Down, Web Portal Availability (Production Instance Only)	S&S
Other	The Customer is responsible for enQuesta user maintenance and general system administration. The Customer is also responsible for any file or report import/export to non-enQuesta servers.	Customer

(i) Data Security. Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as S&S's and its service providers') computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to S&S's and/or its service providers' servers; and (iii) Data is encrypted. Some content may be subject to governmental regulations or may require security measures beyond those specified by S&S for an offering. Customer remains solely responsible for Customer's regulatory compliance in connection with Customer and its Users' use of the Hosting Services. Customer is responsible for making S&S aware of any technical requirements that result from Customer or its Users' regulatory obligations prior to entering into this Agreement. S&S will cooperate with Customer's efforts to determine whether use of the standard S&S Hosting Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by S&S and its service provider or changes to the Hosting Services. Customer will not input or provide such content unless S&S has first agreed in writing to implement additional required security measures. By using the Hosting Services, Customer acknowledges that it meets Customer's requirements and Data (including Personal Information) processing instructions. Customer is solely responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from the Data, including any viruses, Trojan horses, worms or other harmful programming routines contained in the Data, and any use by Customer or its Users of the Hosting Services in a manner that is inconsistent with the terms of this Agreement. To the extent that Customer discloses or transmits the Data to a third party, S&S and its service providers are not responsible for the security, integrity or confidentiality of such content outside of S&S' and its service providers' control.

Unless otherwise agreed to by S&S in in this Agreement, the Data may not include any sensitive or special data that imposes specific security or data protection obligations on S&S and its service provider in addition to or different from those specified in the Service Specifications. If available for the Hosting Services, Customer may purchase additional service from S&S designed to address specific data security or data protection requirements applicable to such sensitive or special data Customer seeks to include in its Data.

S&S and its service providers acknowledge and agree that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to S&S and its service providers' networks and any and all information stored therein. S&S and its service providers are solely responsible for ensuring that S&S's and its service providers' computer systems are secure and protected from unwanted interference (such as "hackers" and viruses).

S&S AND ITS SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. S&S AND ITS SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND S&S AND ITS SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION.

Should the unlikely event of any type of unsolicited activity occur (e.g. even if it's due to suspicious activities by a Customer's employee) S&S reserves the right to immediately block off entry to all parties until root cause is assessed via all activity logs (network, database, and application). The Customer also reserves the right to ask S&S to turn off access to all at any point, in the unlikely event that this should be deemed required.

Current datacenter infrastructure standards are available at the links set out in Schedule "H-4".

8. Warranty and Warranty Disclaimer

- a) Limited Warranty.** S&S warrants to Customer that the Hosting Services shall be performed using commercially reasonable care and skill in all material respects as described in the Service Specifications or in S&S's manuals and other Documentation provided to Customer, provided that all use of the Hosting Services is for the purposes and in the environment for which they were designed and in accordance with such Service Specifications. Customer's sole remedies in the event the Hosting Services do not conform to the foregoing limited warranty: (i) S&S shall, at S&S's expense, use commercially reasonable efforts to correct such non-conformance following receipt of written notification from Customer describing in detail the deficiency that caused the warranty breach, and (ii) if S&S cannot substantially correct the deficiency that caused the breach of warranty or if S&S cannot substantially correct the deficiency in a commercially reasonable manner, S&S shall, at S&S expense, take all actions necessary to complete the transition of Customer to a different hosting provider or host internally. If neither of the foregoing sufficiently remedies the breach or is timely completed, Customer shall have the right to terminate this Agreement in accordance with Section 11(a).
- b) Warranty Disclaimer.** TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 8(a) OF THIS AGREEMENT, THE HOSTING SERVICES, SOFTWARE, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

S&S, ITS THIRD PARTY SERVICE PROVIDER, LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING SOFTWARE, THE HOSTING SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, HARDWARE, ENVIRONMENTS, NETWORKS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HEREWITH,

INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

S&S, ITS THIRD PARTY SERVICE PROVIDER, LICENSORS AND SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE HOSTING SERVICES OR THE SOFTWARE SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS OR EXPECTATIONS, OR THAT ALL ERRORS OR DEFECTS IN THE HOSTING SERVICES OR SOFTWARE CAN BE FOUND OR CORRECTED. S&S AND ITS THIRD PARTY SERVICE PROVIDER ARE NOT RESPONSIBLE FOR ANY ISSUES RELATED TO PERFORMANCE, OPERATION OR SECURITY OF THE HOSTING SERVICES THAT ARISE FROM CUSTOMER'S CONTENT OR THIRD PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.

WITHOUT LIMITING THE FOREGOING, S&S DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF CUSTOMER'S DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.

FOR ANY BREACH OF THE EXCLUSIVE WARRANTY SET OUT IN SECTION 8(A), CUSTOMER'S EXCLUSIVE REMEDY AND S&S'S AND ITS SERVICE PROVIDERS' ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT HOSTING SERVICES THAT CAUSED THE BREACH OF WARRANTY OR IF S&S AND ITS SERVICE PROVIDER CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT HOSTING SERVICES AND S&S WILL REFUND TO CUSTOMER THE HOSTING FEES FOR THE TERMINATED HOSTING SERVICES THAT CUSTOMER PRE-PAID TO S&S FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF S&S AND CUSTOMER.

9. Limitations on Liability

- a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- b) The Customer and S&S recognize that circumstances may arise entitling the Customer to damages for breach or other fault on the part of S&S arising from this Agreement. The parties agree that in all such circumstances the Customer's remedies and S&S's liabilities will be limited as set forth in Section 9 and as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
- c) **EXCEPT FOR DAMAGES ARISING OUT OF (A) DAMAGE TO TANGIBLE PROPERTY, (B) INJURY OR DEATH TO PERSONS, OR (C) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF S&S, CUSTOMER AGREES THAT IN NO EVENT SHALL THE ENTIRE LIABILITY OF S&S AND ITS SERVICE PROVIDERS, AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE HOSTING SERVICES, THE MANAGED SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY S&S UNDER THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED IN THE AGGREGATE, THE ANNUAL HOSTING FEES PAID BY CUSTOMER TO S&S UNDER THIS AGREEMENT DURING THE THEN-CURRENT TERM (AND IN NO EVENT BEING GREATER THAN 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM).**

CUSTOMER FURTHER AGREES THAT IN NO EVENT SHALL S&S AND ITS SERVICE PROVIDERS BE LIABLE UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, LOSS OF REVENUE, FAILURE TO REALIZE ANTICIPATED SAVINGS, DATA USE, DATA INCLUDING WITHOUT LIMITATION LOST OR DAMAGED DATA LOSS OF GOODWILL, BUSINESS OPPORTUNITIES OR REPUTATION, OR ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

10. Change Order Process

With respect to any proposed changes to the Professional Services defined by this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof and will not unreasonably withhold approval of such proposed changes. If Customer causes or requests a change in the allocation of the resources of S&S applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require S&S to provide additional work hours, S&S may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing the Professional Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. Change Orders will need to be approved before any work commences and will be deemed approved upon signature by both parties.

11. Suspension and Termination

(a) Suspension of Hosting Services. In addition to any other rights that S&S may have under this Agreement, at law or in equity, S&S may suspend Customers' and its Users access to, and/or use of, the Hosting Services if S&S or its service provider believes that (i) there is a violation of Section 5(a) or any other material breach of this Agreement; (ii) there is a significant threat to the functionality, security, integrity, or availability of the Hosting Services or any content, data, or applications in the Hosting Services; or (iii) Customer or any User are accessing or using the Hosting Services to commit an illegal act. If S&S receives advance notice from its service provider, S&S will provide Customer with advance notice of any such suspension and will use reasonable efforts to re-establish the Hosting Services promptly after S&S and its service provider determine that the issue causing the suspension has been resolved. During any suspension period, S&S will make the Data (as it existed on the suspension date) available to Customer. Any suspension under this Section shall not excuse Customer from its obligation to make payments under this Agreement.

(b) This Agreement may be terminated as follows:

- a. If either party breaches a material term of this Agreement and fails to cure the breach within thirty (30) days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate this Agreement. Except for non-payment of fees, the nonbreaching party may agree in its sole discretion to extend the thirty (30) day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer agrees that if Customer is in default under this Agreement, Customer and its users may not use the Hosting Services.
- b. If Customer has failed to pay any undisputed amounts when due under this Agreement, S&S shall have the right to (i) suspend performance of the Hosting Services (including Customer access to the Hosting Services) until all amounts are paid in full; and/or (ii) terminate this Agreement effective five (5) days from receipt of written notice to Customer to that effect if Customer has not remedied the failure within such five day period.

- c. S&S may terminate this Agreement effective immediately upon written notice to Customer (i) if Customer has breached its obligations of confidentiality or any intellectual property right or proprietary right of S&S or its service provider; (ii) if S&S has the right to suspend under Section 11(a); (iii) if S&S' relationship with its third party service provider terminates or requires S&S to change the way it provides the Software as part of the Hosting Services; or (iv) in order to comply with the law or requests of government entities.
- d. Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favorably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.
- e. The Organization may terminate this Agreement at its convenience upon ninety (90) days' written notice. In the event of termination, S&S shall be paid for any and all work performed and expenses incurred prior to the date of termination. No refunds will be provided.
- f. This Agreement shall automatically terminate in the event that the Software Implementation Services Agreement is terminated.

12. Effects of Termination

In the event of termination or expiration of this Agreement:

- (a) All rights granted to Customer in this Agreement shall immediately terminate and S&S will immediately cease to perform the Hosting Services.
- (b) Customer will immediately pay all amounts due under this Agreement up to and through the date of termination.
- (c) Customer shall return to S&S or at S&S's option purge or destroy all copies of any Confidential Information of S&S and its service provider in its possession or under its control (except as required under any statute or legislation related to retention requirements), and provide a duly authorized certificate of an officer of Customer confirming same within thirty (30) days.
- (d) Except as otherwise provided in this Agreement, termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (e) Any cancellation and/or termination prior to the end of the Initial Term shall result in the following: an acceleration of all Annual Hosting Fees due thirty (30) days upon receipt of invoice. This section will not affect S&S's right to collect any further invoiced amounts for other Professional Service Fees.
- (f) Conditional upon Customer's payment of all Fees that are due to S&S, S&S will furnish the Customer with a copy of the Data in a format to be mutually agreed upon between the parties in writing (typically a .csv file). The anticipated services to provide a copy of the Data will be billed at S&S's then-current daily rate. Upon receipt of notice from Customer confirming receipt of the Data, S&S shall delete or otherwise render unrecoverable all Data that remains in the Hosting Services. Following forty-five (45) days from the date of termination if Customer has not communicated with S&S regarding the Data, S&S shall have the right to delete or otherwise render unrecoverable all Data at any time as either required by law or as determined by S&S in its sole discretion. Notwithstanding the foregoing, S&S shall be permitted to delete all Data or render all Data unrecoverable without providing notification to Customer and S&S shall not be required to adhere to the time frames detailed above where S&S is required by law to delete such Data.

13. Ownership

- (a) **By S&S.** Customer acknowledges that at all times S&S, its service providers or licensors are and shall remain

the owner of all hardware, servers, equipment, networks or other software S&S uses in the performance of the Hosting Services, derivative works thereof, and anything developed or delivered by or on behalf of S&S or its service provider under this Agreement. S&S, its service providers and licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Hosting Services and Software and related documentation, materials, logos, names and other support materials, derivative works thereof, and anything developed or delivered by or on behalf of S&S or its service provider pursuant to the terms of this Agreement. Customer shall acquire no right whatsoever to all or any part of the Software except the limited right to access and use the Software in accordance with the terms of this Agreement and the Software Implementation Services Agreement and S&S and its licensors reserve all rights not expressly granted to Customer. Customer must fully reproduce any copyright or other notice marked on any part of the documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Customer hereby grants to S&S a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate in to the Hosting Services any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Hosting Services or the Software.

Customer Data. As between S&S and Customer, all Data will remain the sole and exclusive property of the Customer. Customer is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness of the Data and for any required notices, consents, and/or authorizations related to Customer's provision of, and S&S's and its service providers' processing of, the Data (including any Personal Information) as part of the Hosting Services. Subject to the terms and conditions of the Agreement, Customer grants to S&S and its service providers a world-wide, non-exclusive, royalty-free right and license to host, use, process, display, access, and transmit the Data to provide the Hosting Services pursuant to and in accordance with this Agreement (including any form of purchase order issued hereunder). Access to the Data shall only be by S&S's or its service providers' employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, S&S may not access the Data for any other purpose without the express written consent of Customer. Access to Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law.

(b) Data and Privacy Policy of Customer

The Customer represents and warrants to S&S that:

- a. Data that is either provided to or acquired by S&S and its third party service provider is owned exclusively by Customer and that the Customer has full right and title to provide the Data to S&S and its third party service provider, and Customer has obtained all rights required by S&S and its service provider to perform the Hosting Services;
- b. Data that is either provided to or acquired by S&S is subject to a privacy policy in effect as of the Effective Date and maintained throughout the Term and Customer's customers have provided to Customer their written consent for its collection, use and storage by S&S and its third-party service providers in accordance with this Agreement and in any jurisdiction in North America or as set out in the Service Specifications;
- c. Customer complies with all Applicable Data Protection Law in the performance of its obligations hereunder in respect of any Data collected, used, transferred, created or disclosed pursuant to this Agreement; and
- d. Customer will not provide S&S with data of any kind for which S&S or its third party service provider either has no need or does not have the right to collect, use and store under the terms of this Agreement.

(d) Audit Rights

In order to assist S&S with the protection of its proprietary information and Confidential Information and to

enable S&S to verify Customer's compliance with the terms and conditions of this Agreement, Customer shall permit S&S and its independent auditor to visit during normal business hours any premises at which the Hosting Services are used or being accessed and shall provide S&S with access to its records including usage data. S&S shall provide Customer with reasonable notice of any such audit. Customer will promptly order and pay for required entitlements at S&S's then current rates (including uses in excess of Customer's authorizations or licenses) and for other charges and liabilities determined as a result of such verification, as S&S specifies in an invoice. These compliance verification obligations remain in effect during the Term and for two (2) years thereafter.

14. Confidential Information

The parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who have entered into a non-disclosure agreement at least as protective of the other party's Confidential Information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. The parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party.

Customer shall indemnify and reimburse S&S in relation to all reasonable fees and other disbursements paid by S&S to comply with such requests, whether by an individual or a government body, or to challenge such requests at either S&S's or Customer's request. Customer represents and warrants to S&S that as of the Effective Date no individual, government body or third party has requested a review of the Data or challenged the collection and storage of the Data to be stored in the Software.

15. Indemnity

Customer is solely responsible for its Data, its use, and its Users' use, of the Hosting Services in any way, and all legal liability arising out of or relating thereto. Customer shall defend, indemnify and hold S&S and its third party service providers, if applicable, and each of their respective officers, directors, employees and agents (the "Indemnities") harmless from and against any and all losses, costs, damages and expenses (including reasonable attorney's fees) that the Indemnities may suffer in connection with any demands, claims, actions, suits or proceedings arising out of or in connection with (i) the use of the Hosting Services including but not limited to any Third Party Components by Customer or its Users; (ii) any breach by Customer or its Users of this Agreement; (iii) Customer's business, or (iv) Customer's Data, including but not limited to any third party claims that the inclusion, use, reference, incorporation of or linking to any third party materials or the Customer's Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use is illegal.

Subject to the Limitation of Liability herein, S&S shall defend, indemnify, and hold harmless the Organization, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities, and expenses resulting in property damage or personal injury, including reasonable attorneys' fees, resulting from the negligent acts or omissions of S&S, its employees, agents, subcontractors, consultants, or subconsultants, in performing the services required under this Agreement.

16. General

(a) Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of Delaware and the federal laws of the United States applicable therein. This Agreement expressly excludes that body of law applicable to choice of law, the Uniform Commercial Code (except as expressly adopted as Delaware law) and the United Nations Convention on Contracts for the International Sale of Goods and any

legislation implementing such Convention, if otherwise applicable. S&S and Customer hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of S&S. All legal proceedings in connection with this Agreement shall be resolved by a court of competent jurisdiction located in New Castle County, Delaware.

- (b) Mediation.** Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notified the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.
- (c) Notice.** Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered either personally, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after 5:00 p.m. local time on the date of delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed, in the case of the S&S, to:

SYSTEMS & SOFTWARE, INC.
10 East Allen St, Suite 201
Winooski, VT 05404
Attention: Executive Vice President
Telephone: 802.865.1170

and in the case of the Customer, to:

City of Wilmington
Department of Finance
800 N. French Street, 5th Floor
Wilmington, DE 19801
Attention: J. Brett Taylor, Director of Finance
Telephone: 302.576.2401

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 16(c).

- (d) Currency.** Unless otherwise indicated, all dollar amounts referred in this Agreement are in lawful money of United States.
- (e) Entire Agreement.** This Agreement together with the Schedules attached to this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information

contained in a URL or referenced policy) constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, negotiations, understandings, arrangements, and communications between the parties, both written and oral, relating to the subject matter hereof. No terms and conditions in any Customer orders, other than Change Orders pertaining to this Agreement, or in any other documentation employed by or on behalf of Customer in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. This Agreement may only be modified by a written amendment signed by an authorized representative of each of the parties except that S&S modify this Agreement as set forth in Section 6 and may update the Service Specifications upon written notice to Customer or effective upon posting by Oracle of updated documents on Oracle's websites.

- (f) **Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- (g) **Assignment.** Customer may not assign any of its rights or duties under this Agreement without the prior written consent of S&S, such consent not to be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.
- (h) **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable law, the remaining provisions will remain effective and such provision shall be deemed replaced with another term consistent with the purpose and intent of this Agreement to the extent necessary in order to render such provision valid and enforceable. If such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.
- (i) **Allocation of Risk.** Customer acknowledges and agrees that the warranty disclaimer and limitation of liability contained in this Agreement are fundamental elements of the basis of the bargain between S&S and Customer and set forth an allocation of risk reflected in the fees and payments due hereunder.
- (j) **Relationship.** The parties are and shall at all times remain independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the parties. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is lawfully responsible.
- (k) **Equitable Relief.** Customer acknowledges and agrees that it would be difficult to compute the monetary loss to S&S arising from a breach or threatened breach of the confidentiality obligations under this Agreement by Customer and that, accordingly, S&S will be entitled to specific performance, injunctive or other equitable relief in addition to or instead of monetary damages in the event of a breach or threatened breach of this Agreement by Customer.
- (l) **Force Majeure.** No default, delay or failure to perform on the part of S&S shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its reasonable control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, acts of war, hostility, or sabotage, pandemic, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier, electrical, internet or telecommunication outage that is not caused by S&S or its service provider, unavailability of Third Party Components, government restrictions (including the denial or cancelation of any export, import or other license) or other disasters.

- (m) **Survival.** Sections 1 (Definitions), 3 (Fees), 5 (Restrictions on Use), 7(f) (Compliance with Laws), 7(g) (Security), 8 (Warranty Disclaimer), 9 (Limitation of Liability), 12 (Effects of Termination), 13 (Ownership), 14 (Confidential Information), 15 (Indemnity), 16 (General) and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and their obligations hereunder shall survive any termination or expiration of this Agreement unless and until waived expressly in writing by the party to whom they are the benefit.
- (n) **Counterparts.** This Agreement may be executed in counterparts (email scan), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.
- (o) **Limitation Period.** Except for actions for nonpayment or breach of S&S and/or Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than three years after the cause of action has accrued.
- (p) **System and Organization Control Reports.** Oracle shall maintain and upon request provide the Organization any and all System and Organization Control Reports (also known as Service Organization Control Reports) ("SOC Reports") Oracle has acquired that are related to its businesses. The Customer shall treat all SOC Reports as Confidential Information and shall not disclose any SOC Report to a third party, except that disclosure shall be permitted to the Customer's internal and external auditors, attorneys, and other advisers. Notwithstanding the foregoing, if the Customer receives a request under the Delaware Freedom of Information Act ("FOIA") for documents that include a SOC Report, the Customer shall promptly notify S&S of the request and provide the Customer's Law Department's opinion on whether disclosure of the SOC Report is required. If the Customer's Law Department determines that disclosure of the SOC Report is required pursuant to FOIA, the Customer shall be free to disclose the SOC Report in accordance with the deadline set forth by FOIA.
- (q) **Insurance Coverage.** S&S and Oracle shall provide insurance coverage for themselves and all of their respective employees, if any, used in connection with this Agreement as follows: workers' compensation as required by law and commercial general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers. S&S shall provide the Customer with a certificate of insurance evidencing the above-stated coverage and naming the Customer as an additional insured with respect to the commercial general liability coverage.
- (r) **Records.** S&S and Oracle shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the Customer to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the Customer or its authorized representatives upon request; provided, however, that no such audits shall occur more than once in any twelve- month period.

IN WITNESS WHEREOF, S&S and the Customer have duly executed this Agreement to be effective on the Effective Date first written above.

SYSTEMS & SOFTWARE, INC.

CITY OF WILMINGTON:

By: _____

By: _____

Signature

Signature

Name:

Name:

Title:

Title:

Schedule "H-1"
Fees and Payment Schedule

Purchased Hosting Services:

Hosting Services shall be provided for the software products listed in the Software Implementation Services Agreement (SISA).

The total maximum Hosting Fees for the initial (6) term:

PAYMENT TERMS:

Annual Fees:

Term	Yearly Hosting and Managed Services
Year 1	\$0
Year 2	\$75,000
Year 3	\$77,250
Year 4	\$79,568
Year 5	\$81,955
Year 6	\$34,413

Schedule "H-2"
Service Availability

Availability and Uptime Objectives:

Availability of the Hosting Services is defined as when the Software and Customer's data are operational and accessible via a public internet connection. S&S shall strive to make the Hosting Services available 100% of the time. In the unlikely event of any type of downtime the two following SLA schedules will be respected:

Table 1 – Data Center's Power, Network, and Internet Availability

Monthly Performance Rate	Percentage of Applicable Monthly Recurring Hosting Charge Credited to Customer's Account
Equal or Greater than 99%	0%
Equal or Greater than 98%	3%
Equal or Greater than 97%	5%
Equal or Greater than 95%	10%
Less than 95%	25%

Table 2 – enQuesta Production Server Environment and Data Availability

Monthly Performance Rate	Percentage of Applicable Monthly Recurring Hosting Charge Credited to Customer's Account
Equal or Greater than 98%	0%
Equal or Greater than 97%	3%
Equal or Greater than 96%	10%
Less than 95%	25%

Credits or remedies will be provided only upon request of the Customer pursuant to this SLA. Requests for credit must be received within thirty (30) days of the Customer receiving our Root Cause Analysis document for a particular unavailability event. Please note that the official unavailability time that will be subject to a credit will exclude any common exclusions (as listed below).

Remedies for failure to meet any commitment provided in this agreement may not be combined to cover the same second, minute or day time period – only one remedy will be afforded to the Customer per time period.

Fault will be determined, and failure to perform under the obligations of this SLA identified, shall be based on S&S's reports related to Table 2 and Third Party Hosting Provider's monthly monitoring reports related to Table 1, and the performance monitoring reports on these subjects will be final and binding on the parties. Any disagreements will be remedied in accordance with the governing Managed Hosting Support & Maintenance Agreement.

However, the Hosting Services may be unavailable during certain downtimes, which includes, but is not limited to, the following circumstances:

- **Routine Scheduled Downtime.** Periods of time for the purpose of conducting routine system maintenance. In such event, S&S shall use commercially reasonable efforts to provide Customer with a minimum of three (3) business days prior to any period of scheduled downtime and shall use commercially reasonable efforts to limit any such routine system maintenance to weekends between the hours of midnight and 6 AM EST.
- **Factors Outside Our Reasonable Control.** Due to factors outside S&S's reasonable control (for example, a Force Majeure event, emergencies such as natural disasters, power surges, lightning

strikes, or a network or device failure external to our data centers) or other exceptional circumstances, S&S shall be entitled to take any actions determined, in its sole discretion, necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to hosting infrastructure (“Emergency Work”). S&S shall endeavor to provide advance notice of such Emergency Work to Customer when practicable and possible, but shall not be held responsible for any deterioration of performance or System unavailability to Customer during such events or Emergency Work.

- **Unauthorized Actions.** S&S shall not be responsible for any System unavailability that results from Customer’s unauthorized action or lack of action when required, or from Customer’s employees, agents, contractors, or vendors, or anyone gaining access to the Hosting Services by means of Customer passwords or equipment, or otherwise resulting from Customer failure to follow appropriate security practices. Although S&S will use commercially reasonable efforts to mitigate the effects of any such events, S&S cannot guarantee that such events will not occur. Accordingly, S&S disclaims any and all liability resulting from or relating to such events.
- **Failure to Adhere to Requirements.** S&S shall not be responsible for any System unavailability for any failure by reason of Customer’s failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or use of the Hosting Services in a manner inconsistent with the features and functionality of the Hosting Services (for example, attempts to perform operations that are not supported, exceeding prescribed quotas, or suspected abusive behavior) or inconsistent with S&S’s published guidance.

Schedule "H-3"

Third Party Components Additional Terms

A. Service Monitoring, Analyses and Oracle Software

1. S&S' service provider, Oracle, continuously monitors the Hosting Services to facilitate its operation of the Hosting Services; to help resolve Customer's service requests; to detect and address threats to the functionality, security, integrity, and availability of the Hosting Services as well as any content, data, or applications in the Hosting Services; and to detect and address illegal acts or violations of Section 5(a). The monitoring tools used by Oracle do not collect or store any of Customer's Data residing in the Hosting Services, except as needed for such purposes. Oracle does not monitor, and does not address issues with, the Software or any other non-Oracle software provided by Customer or any Users that is stored in, or run on or through, the Hosting Services. Information collected by Oracle monitoring tools (excluding Customer's Data) may also be used to assist in managing Oracle's product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license management purposes.
2. Oracle may (i) compile statistical and other information related to the performance, operation and use of the Hosting Services, and (ii) use data from the Hosting Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer's Data, Personal Information or Confidential Information in a form that could serve to identify Customer or any individual. Oracle retains all intellectual property rights in Service Analyses.
3. If Oracle software is licensed to Customer under separate terms, then Customer's use of such software is governed by the separate terms. S&S has no obligation or responsibility with respect to such separately licensed Oracle software.

B. Service Specifications

Data Processing Agreement

Customer agrees that the Oracle Data Processing Agreement available at the link below sets out the parties obligations with respect to processing of Data and Personal Information.

<http://www.oracle.com/us/corporate/contracts/data-processing-agreement-011218-4261005.pdf>

Oracle Services Privacy Policy

The Oracle privacy policy applicable to the Hosting Services is set out at the following link:

<https://www.oracle.com/legal/privacy/services-privacy-policy.html>

Oracle Cloud Hosting and Delivery Policies

<https://www.oracle.com/assets/ocloud-hosting-delivery-policies-3089853.pdf>

The Oracle Service descriptions – security

Oracle's applicable administrative, physical, technical and other safeguards, and other applicable aspects of system and content management are available the following link:

<https://www.oracle.com/assets/corporate-security-practices-4490843.pdf>

The foregoing information, including the links to such information, may be changed from time to time therefore Customer is responsible for reviewing such information periodically.

C. Standards

Details regarding Oracle's standards compliance for the Hosting Services may be viewed at the following link: <https://www.oracle.com/ca-en/cloud/cloud-infrastructure-compliance/>

Schedule "H-4"

END-USER LICENSE AGREEMENT

(Embedded)

This End-User License Agreement (this "Agreement") is entered into as of November 1, 2023, (the "Effective Date") by and between Systems and Software, Inc., ("S&S"), and the City of Wilmington ("Customer").

RECITALS

S&S is a distributor of certain Oracle software offerings that Customer has agreed to license ("Programs"). Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, including those outlined on Attachment "A", "B", and "C" (which are incorporated into this Agreement by this reference), the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as set forth below.

TERMS AND CONDITIONS

1. DEFINITIONS. The following capitalized terms shall have the following meanings whenever used in this Agreement.

- 1.1. "Documentation" means the Program's standard user manual made available by S&S from time to time.
- 1.2. "EnQuesta" means the proprietary software of S&S in which the Programs are embedded.
- 1.3. "Oracle Terms" means the Oracle terms and conditions set out in Attachment "B", and as such terms and conditions may be revised from time to time.
- 1.4. "Programs" means the software offerings owned or distributed by Oracle (including Program documentation and any program updates acquired through technical support) and distributed by S&S that are set out in the Order Form included as Attachment "A".
- 1.5. "Oracle" means Oracle America, Inc.
- 1.6. "Specifications" means Oracle's standard specifications for the Programs set forth in its then-current Documentation.
- 1.7. "Term" is defined in Section 9.1 below.
- 1.8. "Upgrade" means a new versions, updates, or upgrades of the Programs, in object code format.

2. LICENSES & DELIVERY.

- 2.1. License. S&S hereby grants Customer a nonexclusive license to use the Programs during the Term, provided Customer complies with the restrictions set forth in Section 2.2 below.
- 2.2. Restrictions on Program Rights. Copies of the Programs created or transferred pursuant to this Agreement are licensed, not sold, and Customer receives no title to or ownership of any copy or of the Programs itself. Furthermore, Customer receives no rights to the Programs other than those specifically granted in Section 2.1 above. Without limiting the generality of the foregoing, Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Programs; (b) use the Programs for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Programs; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Program's source code.
- 2.3. Oracle Terms. In addition to the restrictions set out in Section 2.2 above, Customer shall comply with the Oracle Terms,

which Customer acknowledges are integrated into and form part of this Agreement. If any of the terms and conditions of S&S's agreement with Oracle are modified by Oracle, S&S may modify the terms and conditions of this Agreement effective immediately upon written notice to Organization, subject to the right of Organization to terminate set out in this Section 9.

- 2.4. Documentation: Customer may reproduce the Documentation as reasonably necessary to support internal use of the Programs.
- 2.5. Delivery. S&S shall provide the Programs to Customer as embedded software within enQuesta.

FEES & REIMBURSEMENT.

- 2.6. Fees. Customer shall pay S&S as set out in Attachment "C":
- 2.7. Invoices. Payment against all invoices will be due within 30 days thereof.
- 2.8. Fees for Renewed Terms. S&S may increase the License Fee by any amount as determined by S&S or Oracle.
- 2.9. Taxes. Amounts due under this Agreement are payable to S&S without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld at the source. If applicable law requires withholding or deduction of such taxes or duties, Customer shall separately pay S&S the withheld or deducted amount. However, the prior two sentences do not apply to taxes based on S&S's net income.

3. IP & FEEDBACK.

- 3.1. IP Rights in the Programs. S&S and Oracle retain all rights, title, and interest in and to the Documentation and Programs, including without limitation Upgrades, except to the extent of the limited licenses specifically set forth in Sections 2.1 (*Licenses*), and 2.3 (*Documentation*). Customer recognizes that the Programs and its components are protected by copyright and other laws.
- 3.2. Feedback. Customer hereby grants S&S and Oracle a perpetual, irrevocable, worldwide license to use any Feedback (as defined below) Customer communicates to S&S and Oracle during the Term, without compensation, without any obligation to report on such use, and without any other restriction. S&S and Oracle's rights granted in the previous sentence include, without limitation, the right to exploit Feedback in any and every way, as well as the right to grant sublicenses. Notwithstanding the provisions of Section 4 (*Confidential Information*) below, Feedback will not be considered Customer's Confidential Information. ("Feedback" refers to any suggestion or idea for modifying any of Vendor's products or services, including without limitation all intellectual property rights in any such suggestion or idea.)

4. CONFIDENTIAL INFORMATION.

- 4.1. Confidential Information Defined. "Confidential Information" refers to any information Oracle and/or S&S discloses to the Customer. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of the Customer; (b) was in the Customer's lawful possession prior to the disclosure and had not been obtained by the Customer either directly or indirectly from S&S or Oracle; (c) is lawfully disclosed to the Customer by a third party without restriction on the disclosure; or (d) is independently developed by the Customer.
- 4.2. Nondisclosure. Customer shall not use Confidential Information for any purpose other than to facilitate the transactions contemplated by this Agreement (the "Purpose"). Customer: (a) shall not disclose Confidential Information to any employee or contractor of Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Customer with terms no less restrictive than those of this Section 4; and (b) shall not disclose Confidential Information to any other third party without S&S or Oracle's prior written consent. Without limiting the generality of the foregoing, Customer shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care.

Customer shall promptly notify S&S of any misuse or misappropriation of Confidential Information that comes to Customer's attention. Notwithstanding the foregoing, Customer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give S&S and Oracle prompt notice of any such legal or governmental demand and reasonably cooperate with S&S and Oracle in any effort to seek a protective order or otherwise to contest such required disclosure, at S&S and Oracle's expense.

- 4.3. Injunction. Recipient agrees that breach of this Section 4 would cause S&S and Oracle irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, S&S and Oracle will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 4.4. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 4.2 above (*Nondisclosure*) will terminate 10 years after the date of disclosure; provided that such obligations related to Confidential Information constituting S&S and Oracle's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Customer shall return all copies of Confidential Information to S&S or Oracle or certify, in writing, the destruction thereof.
- 4.5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. S&S and Oracle will retain all right, title, and interest in and to all Confidential Information.
- 4.6. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b) (the "DTSA"), Customer is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
 - (a) *IMMUNITY*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - (b) *USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

5. PROGRAMS AUDIT. S&S or Oracle may audit Customer's use of the Programs at any time Customer shall cooperate with the audit, including by providing access to any books, computers, records, or other information that relate or may relate to use of the Programs. Such audit shall not unreasonably interfere with Customer's business activities. If S&S or Oracle discovers unauthorized use, reproduction, distribution, or other exploitation of the Programs, Customer shall reimburse S&S and Oracle for the reasonable cost of the audit, or of the next audit in case of discovery without an audit, in addition to such other rights and remedies as S&S may have. For clarity, this Section 5 shall survive the termination of this Agreement.

6. REPRESENTATIONS & WARRANTIES.

From S&S:

- 6.1. S&S warrants that the Programs will operate in all material respects as described in the applicable Program documentation for 30 days from implementation (i.e., via physical shipment or electronic download). Customer must notify S&S of any Program warranty deficiency related to the Programs within 30 days from delivery. S&S also warrants that services will be provided in a professional manner consistent with industry standards. Customer must notify S&S of any services warranty deficiencies related to services provided to the Customer within 30 days from performance of the deficient services. S&S DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS.
- 6.2. FOR ANY BREACH OF THE ABOVE WARRANTIES, CUSTOMER'S EXCLUSIVE REMEDY AND S&S'S ENTIRE LIABILITY SHALL

BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF S&S CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER AND THE CUSTOMER ENDS THE PROGRAM LICENSE, CUSTOMER MAY RECOVER THE FEES CUSTOMER PAID TO S&S FOR THE PROGRAM LICENSE DISTRIBUTED TO THE CUSTOMER AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES CUSTOMER HAS PAID FOR THE PROGRAM LICENSE DISTRIBUTED TO CUSTOMER; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES PROVIDED BY S&S; OR, IF S&S CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER AND THE CUSTOMER ENDS THOSE SERVICES, CUSTOMER MAY RECOVER THE FEES CUSTOMER PAID TO S&S FOR THE DEFICIENT SERVICES PROVIDED BY S&S TO THE CUSTOMER.

- 6.3. THE PROVISION OF ANY EDUCATIONAL AND TRAINING OFFERINGS WHICH MAY BE PERMITTED BY ORACLE ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

From Both Parties:

- 6.4. Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
- 6.5. Warranty Disclaimers. Except for the express warranties in Sections 6.1, 6.2, 6.3, and 6.4 above, S&S MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. S&S does not warrant that the Programs will perform without error or that it will run without immaterial interruption. S&S provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Programs made by anyone other than S&S or Oracle, unless S&S or Oracle approves such modification in writing; or (b) use of the Programs in combination with any operating system not authorized in the Specifications or Documentation or with hardware or Programs specifically forbidden by the Specifications or Documentation.

7. INDEMNIFICATION.

- 7.1. If a third party makes a claim against Customer that any Program infringes their intellectual property rights based on the distribution of the Programs in accordance with the terms of this Agreement, S&S, at its sole cost and expense, will defend Customer against the claim and indemnify Customer from the damages, liabilities, costs and expenses finally awarded by the court to the third party claiming infringement or the settlement agreed to by S&S, if Customer does the following:
- a) notify S&S promptly in writing, not later than 10 days after Customer receives notice of the claim (or sooner if required by applicable law);
 - b) give S&S and Oracle sole control of the defense and any settlement negotiations; and
 - c) give S&S and Oracle the information, authority, and reasonable assistance S&S and Oracle needs to defend against or settle the claim.
 - d) does not give any admissions or enter into any settlement negotiations either prior to or after providing notice to S&S of the applicable claim except with S&S's prior written consent
- 7.2. If S&S believes or it is determined that any of the Programs may have violated a third party's intellectual property rights, S&S may choose to either modify the Programs to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, S&S may end the license for the applicable Programs and refund any fees Customer may have paid to S&S and Oracle for it and any unused, prepaid technical support fees Customer have paid to S&S and Oracle for the applicable product. Notwithstanding the preceding sentence and with respect to hardware only (excluding the operating system, integrated

Programs, and integrated Programs options), if S&S believes or it is determined that the hardware (or portion thereof) may have violated a third party's intellectual property rights, S&S may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, S&S may remove the applicable hardware (or portion thereof) and refund the net book value.

- 7.3. S&S will not indemnify Customer if Customer alters the Programs or if Customer uses the Programs for purposes outside the scope of use identified in the user documentation or if Customer uses a version of the Programs which has been superseded, if the infringement claim could have been avoided by distributing or using an unaltered current version of the Programs which was provided to Customer. S&S will not indemnify Customer to the extent an infringement claim is based upon any Programs not provided by S&S. S&S will not indemnify Customer to the extent that an infringement claim is based upon the combination of any Programs with any products or services not provided by S&S. S&S will not indemnify Customer for infringement caused Customer's actions against any third party if the Programs as delivered to Customer in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. S&S will not indemnify Customer for any infringement claim that is based on: (1) a patent that Customer was made aware of prior to the effective date of this agreement (pursuant to a claim, demand, or notice); or (2) Customer's actions prior to the effective date of this Agreement. If a third party makes a claim against S&S or Oracle that any Programs, when used in combination with any product or services used by Customer, infringes their intellectual property rights, and such claim would have been avoided by the exclusive use of the Programs, Customer will indemnify S&S and Oracle. This section provides Customer's exclusive remedy for any infringement claims or damages.

8. LIMITATION OF LIABILITY.

- 8.1. Dollar Cap. S&S AND ORACLE'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO S&S UNDER THIS AGREEMENT DURING THE THEN-CURRENT TERM (AND IN NO EVENT BEING GREATER THAN TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM).
- 8.2. Excluded Damages. IN NO EVENT WILL S&S OR ORACLE BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 8.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS SECTION 8 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF S&S IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 8, S&S and Oracle's liability will be limited to the maximum extent permissible. For the avoidance of doubt, S&S and Oracle's liability limits and other rights set forth in this Section 8 apply likewise to S&S's and Oracle's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

9. Term & Termination.

- 9.1. Term. This Agreement will remain in effect for 1 year from the Effective Date (the "Term"). Thereafter, the Term will renew for successive 1 year periods, unless either party refuses such renewal by written notice 30 or more days before the end of the current Term
- 9.2. Termination. Customer acknowledges that the availability of the Programs are based solely on the best information available to S&S as of the Effective Date (including third party representations and government regulations) and is subject to change during the Term with little or no advance notice. If the Programs are determined by S&S to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of S&S's control, then (a) S&S shall not be in breach hereof or otherwise liable for any failure or inability to provide the Programs as a result of unavailability from Oracle; and (b) S&S may terminate this Agreement pursuant to this Section 9.

If any modification, change or replacement of the Program includes a material price increase or impairs Customer's ability to utilize the Program in substantially the same manner as it was utilized prior to the modification, change or replacement, either party may terminate this Agreement by providing written notice to the other party on 30 days written notice.

- 9.3. Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the Programs and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 2.2 (*Restrictions on Program Rights*) 3 (*IP & Feedback*), 4 (*Confidential Information*), 5 (*Programs Audit*), 6.5 (*Warranty Disclaimers*), 7 (*Indemnification*), and 8 (*Limitation of Liability*); and any other provision of this Agreement that must survive to fulfill its essential purpose.

10. MISCELLANEOUS.

- 10.1. Unilateral Right to Modify Agreement. Customer acknowledges that the terms and conditions governing the Programs is based on S&S's agreement with Oracle as of the Effective Date (including third party representations and government regulations) and is subject to change during the Term with little or no advance notice. S&S may, from time to time, give Customer written notice of amendment to this Agreement. Any such amendment will automatically become effective as specified in the notice.
- 10.2. Conflicts. The Oracle Terms are attached to this Agreement as Attachment "B". In the event of a conflict between the terms of this Agreement and Attachment "B", the terms in Attachment "B" will govern.
- 10.3. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 10.4. Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested. For S&S: _____ . For Customer: _____ .
- 10.5. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, epidemics, hurricanes, earthquakes, other acts of God or of nature, shelter-in-place or other governmental orders, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- 10.6. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Vendor's express written consent. Except to the extent forbidden in this Section 10.6, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 10.7. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 10.8. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 10.9. U.S. Government Restricted Rights. The Programs and Documentation are commercial items, as that term is defined in 48 CFR 2.101, consisting of commercial computer Programs and commercial computer Programs documentation, as those terms are used in 48 CFR 12.212. If the Programs or Documentation is acquired by or on behalf of the U.S.

government or by a U.S. government contractor (including without limitation prime contractors and subcontractors at any tier), then in accordance with 48 CFR 227.7202-4 (for Department of Defense licenses only) and 48 CFR 12.212 (for licenses with all federal government agencies), the government's rights to the Programs and Documentation are limited to the commercial rights specifically granted in this Agreement, as restricted by this Agreement. The rights limited by the preceding sentence include, without limitation, any rights to reproduce, modify, perform, display, disclose, release, or otherwise use the Programs or Documentation. This Section 10.9 does not grant Customer any rights not specifically set forth in this Agreement.

- 10.10.Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of California, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of San Francisco or Santa Clara Counties. This Section 10.10 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- 10.11.Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 10.12.Technology Export. Customer shall not: (a) permit any third party to access or use the Programs in violation of any U.S. law or regulation; or (b) export the Programs or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Programs in, or export it to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- 10.13.Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 10.14.Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 10.15.Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

CUSTOMER

S&S

By: _____

(signature)

By: _____

(signature)

Name: _____

(print)

Name: _____

(print)

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT "A"
Embedded Software License Application Package Registration Form

Attachment "B"

Oracle Terms

The required terms set forth below are subject to change at Oracle's discretion upon 30 days' notice. The Customer acknowledges:

- (1) the Programs and/or hardware that are subject to this Agreement are limited to the Customer and no other legal entity.
- (2) the use of the Programs are limited to the internal business operations of the Customer. Customer may allow agents or contractors (including, without limitation, outsourcers) to use the Programs on the Customer's behalf for the purposes of this Agreement, subject to the terms of this Agreement, provided that Customer is responsible for the agent's, contractor's and outsourcer's compliance with the Agreement in such use.
- (3) the operating system delivered with the hardware is restricted to the terms of the license delivered with the hardware and only as incorporated in, and as part, of the hardware.
- (4) the integrated Programs and integrated Programs options must be used in accordance with the terms of the Agreement and the hardware documentation and only as incorporated in, and as part, of the hardware.
- (5) ancillary programs are those third party materials specified in the Program documentation which may only be used for the purposes of installing or operating the Programs with which the ancillary programs are delivered.
- (6) Oracle or its licensors retain all ownership in the intellectual property rights to the Programs, operating system, integrated Programs, and integrated Programs options.
- (7) third party technology that may be appropriate or necessary for use with some Oracle Programs and/or hardware is specified in the Program documentation, readme files, notice files, installation details and/or hardware documentation and that such third party technology is licensed to the Customer under the terms of the third party technology license agreement specified in the Program documentation, readme files, notice files, installation details and/or hardware documentation and not under the terms of this Agreement.
- (8) the hardware, integrated Programs, and integrated Programs options are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or operation of a nuclear facility and prohibit use of the hardware, integrated Programs, or integrated Programs options for these purposes.
- (9) the Customer is prohibited from assigning, giving, or transferring the Programs, operating system, integrated Programs, integrated Programs options, and/or any services ordered or an interest in them to another individual or entity (in the event the Customer grants a security interest in the Programs, operating system, integrated Programs, integrated Programs options, and/or any services, the secured party has no right to use or transfer the Programs, operating system, integrated Programs, integrated Programs options, and/or any services). If the Customer decides to finance its acquisition of the Programs, hardware and/or any services, the Customer must follow Oracle's policies regarding financing which are available at <http://oracle.com/contracts>.

(10) the Agreement prohibits (a) use of the Programs for rental, leasing, timesharing, subscription service, hosting, or outsourcing; (b) the removal or modification of any Program or hardware markings or any notice of Oracle's or its licensors' proprietary rights; and (c) making the Programs available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Program license); and (d) title to the Programs, operating system, integrated Programs, or integrated Programs options from passing to the Customer or any other party.

(11) the reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Programs (the foregoing prohibition includes but is not limited to review of data structures or similar material produced by Programs), operating system, integrated Programs, or integrated Programs options is prohibited. The duplication of the Programs, operating system, integrated Programs, or integrated Programs options is prohibited, except for a sufficient number of copies for the Customer's licensed use and one copy of each Program media.

(12) The use of any additional software that Oracle may include with the Programs and/or hardware ordered for trial, non-production purposes only is restricted. The Customer may not use such additional software included with an order to provide training or attend training provided by S&S or a third party on the content and/or functionality of the software. The Customer has 30 days from the delivery date to evaluate the additional software, subject to the terms of the Agreement. If the Customer decides to use any additional software after the 30 day trial period, the Customer must obtain a license for such software from S&S. If the Customer decides not to obtain a license for the additional software after the 30 day trial period, the Customer will cease using and will delete any such software from the Customer's computer systems. Additional software included with an order are provided "as is" and Oracle does not provide technical support or offer any warranties for the software.

(13) technical support, if ordered from Oracle, is provided under Oracle's technical support policies in effect at the time the services are provided and that Oracle's technical support policies can be accessed at <http://oracle.com/contracts>. The Customer acknowledges that Oracle's technical support policies are incorporated into the Agreement by reference. If the Customer decides not to purchase technical support at the time of the license and/or hardware then the Customer will be required to pay reinstatement fees to Oracle in accordance with Oracle's current technical support policies if the Customer decides to purchase support at a later date.

(14) any third party firms retained by the Customer to provide computer consulting services are independent of Oracle and are not Oracle's agents and that Oracle is not liable for nor bound by any acts of any such third party firm.

(15) some Programs, operating system, integrated software, or integrated software options may include source code that Oracle may provide as part of its standard shipment of such Programs, operating system, integrated software, or integrated software options which source code shall be governed by the terms of this Agreement.

(16) hardware, if purchased, includes Oracle's hardware warranty in effect at the time the hardware is purchased and that Oracle's hardware warranty can be accessed at <http://www.oracle.com/support/policies.html>.

(17) to the extent not prohibited by applicable law, Oracle will have no liability for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Programs and/or hardware.

(18) at the termination of the Agreement, the Customer shall discontinue use and destroy or return to S&S all copies of the Programs and documentation.

(19) publication of any results of benchmark tests run on the Programs and/or hardware is prohibited.

(20) The Customer shall comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the programs, the hardware nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.

(21) Oracle is not required to perform any obligations or incur any liability not previously agreed to between S&S and Oracle.

(22) S&S may, at any time audit the Customer's use of the Programs. The Customer is required to provide reasonable assistance and access to information in the course of such audit and S&S is permitted to report the audit results to Oracle. At S&S's sole discretion, S&S may assign the right to audit the Customer's use of the Programs to Oracle. Oracle and S&S shall not be responsible for any of Customer's costs incurred in cooperating with the audit.

(23) the Customer has not relied on the future availability of any hardware, Programs or updates in entering into the Agreement; however, (a) if the Customer orders technical support from Oracle, the preceding sentence does not relieve Oracle of its obligation to provide updates under such order, if-and-when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to Customer for any Program licensed under this Agreement, per the terms of this Agreement.

(24) Oracle is a third party beneficiary of this Agreement.

(25) the application of the Uniform Computer Information Transactions Act is excluded from this Agreement.

(26) If a third party makes a claim against the Customer that any (i) hardware (excluding the operating system, integrated Programs or integrated Programs options); or (ii) Programs ((i) and (ii) collectively referred to as the "indemnified material"); ") infringes their intellectual property rights based on the Customer's use of the indemnified material (as applicable), Customer must notify S&S within 10 days after Customer receives notice of the claim (or sooner if required by applicable law). Customer must give S&S sole control of the defense and any settlement negotiations; and give S&S the information, authority, and reasonable assistance S&S needs to defend against or settle the claim.

(27) this Agreement prohibits: (a) the transfer of the Programs except for temporary transfer in the event of computer malfunction if the Programs are embedded in a physical device and (b) the Customer from assigning, giving, or transferring the Programs and/or any services ordered or an interest in them to another individual or entity (in the event the Customer grants a security interest in the Programs and/or any services, the secured party has no right to use or transfer the Programs and/or any services).

(28) the Programs are subject to a restricted license and can only be used pursuant to the terms of this Agreement and that the Customer is not permitted to modify the Programs.

(29) third party technology that may be appropriate or necessary for use with some Oracle Programs is specified in the documentation and that such third party technology is licensed to the Customer only for use with the Programs under the terms of the third party license agreement specified in the documentation.

Attachment "C"

License Cost Details: Included in the enQuesta Licensing fees.