LICENSOR:_____
RESELLER (if any):_____
CONTRACT PIN:_____

The terms and conditions of this end-user license agreement ("**EULA**" or "**Agreement**") by and between _____, as licensor and provider ("**Licensor**"), and the City (defined below), as licensee ("**Licensee**"), are applicable to any Software (including Software embedded in Hardware) and Software Support/Maintenance sold, licensed, transferred or otherwise provided to the City by Licensor or through a third-party reseller ("**Reseller**"). As used in this EULA, **"Party"** refers to Licensor or Licensee (i.e., does not include a Reseller or subcontractor), individually, and **"Parties"** means the Licensor and the Licensee collectively.

The Parties agree as follows:

1. Additional Definitions

"**Affiliate**" means any parent, subsidiary or other entity that is (directly or indirectly) controlled by, or controls, Licensor. "Control(led)" is the ability to determine the management policies of an entity through equity ownership of a majority of interests of such entity.

"**City**" means the City of New York and/or a county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City of New York's treasury, or an entity created under New York law specifically for the benefit of the City or to serve persons present in the City of New York and that has one (1) or more members or directors of which are appointed by the mayor or City Council (e.g., the New York City Board of Elections).

"**City Data**" means (1) Data characterizing the City or its behavior, (2) Data created, generated, stored or maintained by, at the direction of, or for the benefit of the City, and (3) any copies or derivatives of such Data.

"City Technology Assets" means all City facilities, City Systems, City telecommunications, electronic data created, processed, accessed, transferred, stored, or disposed of by City Systems, and such systems' peripheral equipment, networks, or magnetic data, and any electronic data created, processed, accessed, transferred, stored, or disposed of by such systems. "**City Systems**" means any system owned, maintained or operated by or on behalf of the City that connects to a City network, enables operational functions of the City, or creates, processes, accesses, transfers, stores, or disposes of City Data.

"Cyber Command" means the Office of Cyber Command, established within the New York City Office of Technology and Innovation (**"OTI"**), that is empowered to ensure compliance with Policies and Standards, mitigate cyber threats, mandate deployment of technical and administrative controls, review cyber related spending, and collaborate with federal and state government agencies and private sector organizations.

"**Data**" means any information, representation(s) of information, knowledge, facts, ideas, concepts or similar including but not limited to any texts, instructions, documents, databases, diagrams, graphics, drawings, images, sounds, or biometrics that are accessed, communicated, created, generated, stored (in temporary or permanent form), filed, produced or reproduced, processed, referenced, or transmitted, in any form or media.

"**Documentation**" means all product documents provided by or on behalf of Licensor with, for, or related to the Software and/or Hardware, including but not limited to guides, manuals, and other

technical information (in print, online or machine-readable form), that describes, among other things, the functionality and use of the Software (and any applicable Hardware).

"DOITT" means the City Department of Information Technology and Telecommunications.

"**Hardware**" means, individually and collectively, all physically tangible components and peripherals and appliances that make up an electronic system provided to the City by Licensor or through a Reseller. For the avoidance of doubt, Hardware includes the hardware component(s) of IOT Devices (as defined herein).

"**Intellectual Property Rights**" or "**Intellectual Property**" means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, and trade secrets of either Party, including, but not limited to, such rights relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the licensed product.

"**IOT Device**" means an entire device, including its Hardware and its accompanying Software, that has the purpose of exchanging data through the internet and/or with other devices and systems.

"**Open Source Software**" or "**OSS**" means an open source or other license that requires, as a condition of use, modification, or distribution, that any resulting software must be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

"**Security Incident**" means any event that compromises or is suspected to compromise the security, confidentiality, integrity, or availability ("**SCIA**") of City Data, City Information Assets or Hardware, including by compromising the physical, technical, administrative or organizational safeguards to protect the SCIA of City Data, City Information Assets or Hardware. Examples of a Security Incident include, but are not limited to, the unauthorized acquisition or use of unencrypted City Data (or encrypted City Data and the decryption key), intrusions, virus or malware, ransomware infections, social engineering, missing/stolen hardware, a breach of access credentials, DDOS and DoS attacks.

"**Software**" means any set of machine-readable instructions provided to the City by Licensor or through a Reseller that directs a computer's processor to perform specific operations, including but not limited to firmware, operating system(s), and instructions hosted on a virtual machine. Software includes updates, upgrades, patches and the like. For the avoidance of doubt, Software includes the software component(s) of IOT Devices (as defined herein).

"**Support/Maintenance**" means activities to maintain and/or improve the SCIA of the Software (and/or Hardware, if applicable), including but not limited to troubleshooting, modifying, maintaining, enhancing, and bug fixing. See Support/Maintenance Attachment. Support/Maintenance does not include consulting services or other professional services provided to the City through a separate statement of work.

"**Usage Data**" means data and information in the nature of Software administrative data generated by and/or characterizing the City's use of the Software and/or Hardware, including, but not limited to, number of end users, version number(s), identification numbers, and other usage statistics.

2. Order of Precedence

This EULA takes precedence over any separate agreement between the City and Licensor, and the City and Reseller. In the event of a conflict between this Agreement and any other separate agreement, this Agreement shall prevail.

3. Survival

All terms of this Agreement that should by their nature survive termination will survive, including, Sections 27 (Governing Law; Jurisdiction and Venue), 11 (City Data), 6 (Warranties), and 14 (Security Requirements), 7 (Indemnification), 8 (Limitation of Liability), 28 (Publicity), 25 (Separation Assistance / Sunsetting / End of Life / Transition Support).

4. Licenses

The Licensor hereby grants to the City paid-up, royalty-free, worldwide, non-exclusive perpetual, transferable, and irrevocable licenses to use, configure, install, implement, distribute to Authorized Users, make, modify, adapt, display, perform, create derivative works of, and copy for backup and disaster recovery purposes, the Software and the Documentation, as applicable including all actions and licenses necessary to fully effectuate the purposes of this Agreement and the City's internal business and IT purposes; and access and use Licensor's documentation.

The "**Authorized User**" of the Software is the City, including its employees, authorized agents, consultants, auditors, other independent contractors (e.g., an integrator) and any external users contemplated by the parties. This section does not modify the quantity of users licensed.

5. Delivery and Acceptance

Upon the City's successful installation of the Software (which may mean the successful installation of the Hardware containing the Software), Licensee shall have thirty (30) days to ensure the Software conforms in all material respects to the Documentation. If Licensee believes that the Software fails to conform to the Documentation, Licensee shall provide Licensor with notice setting forth, in reasonable detail, the reason(s) for its belief and Licensor shall have fifteen (15) days to correct the issue(s) or otherwise provide the City with conforming Software. If the Software does not conform to the Documentation after resubmission, the Licensee may in its sole and exclusive discretion (a) accept the Software, (b) require Licensor to fix or re-issue the Software pursuant to this Section 5 again, or (c) terminate the affected license(s) and Licensor shall refund any fees paid for the non-conforming Software (and refund fees for Hardware if the non-conforming Software is contained in the Hardware).

6. Warranties

6.1 Support. Licensor represents and warrants that the Software and Hardware provided under the EULA will function in accordance with the Documentation, and Licensor will provide Support/Maintenance in accordance with the Support/Maintenance Attachment. Notwithstanding any conflicting language in the Documentation or Support/Maintenance Attachment, Licensor may not export City Data outside the United States except with the express written permission of the City.

6.2 Intellectual Property. Licensor represents and warrants that it has the rights necessary to license and provide the Software, Hardware and Documentation to the Licensee in accordance with the terms of the EULA.

6.3 Malware. Licensor warrants that the Software does not contain any: (i) viruses, worms, spyware or malware; (ii) coding that may disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numerals, or other similar self-destruct mechanisms (e.g., "time bombs," "time locks," or "drop dead"); (iii) coding that would permit the Licensor or any third party to access the Software to cause disablement or impairment (e.g., "trap doors"); or (iv) other code or mechanism deliberately included to degrade performance, result in inaccurate data, deny accessibility, or adversely affect, in any way, programs or data or use of the Software.

6.4 Licensor shall use, at a minimum, industry standards to ensure it does not introduce or allow for any viruses or any other form of malicious code into the Software.

6.5 No warranties provided by the Reseller or Licensor will be invalidated by the failure of the City to install or otherwise use an available Software update (e.g., a new version or release).

6.6 Licensor represents and warrants all products and services provided to the City comply with applicable law.

6.7 Licensor represents and warrants there is no pending or threatened litigation involving Licensor that may impair or interfere with the City's right to use the Software or Hardware and Licensor has sufficient authority to enter into this EULA and grant the rights provided in the EULA to the City.

7. Indemnification

7.1 Licensor's Indemnification. To the fullest extent permitted by law, Licensor shall defend, indemnify and hold Licensee and its employees, officials, officers, and agents (collectively, "**Indemnitees,**" each an "**Indemnitee**") harmless from any and all judgments, damages, liabilities, amounts paid in settlement, awards, fines, penalties, disbursements, costs and expenses (including witness fees, expert fees, investigation fees, travel expenses, bonds, the cost of establishing the right to indemnification under this Section 7, court or arbitration costs and reasonable attorney's fees) to which an Indemnitee may be subjected, become liable to pay, suffer or incur in connection with any claim, allegation, suit, subpoena, action or proceeding (whether completed, actual, pending, threatened, civil, criminal, investigative, administrative, meritorious or without merit) that arises from or relates to (a) breach of confidentiality; (b) the infringement of any copyright, trade secret, trademark, patent or other tangible or intangible property or personal right of any third party by the Licensor or anyone acting on its behalf; (c) costs and expenses to which the Indemnitees may suffer in connection with any operations of Licensor and/or anyone acting on its behalf to the extent resulting from any negligent act of commission or omission, or any intentional tortious act; (d) failure to comply with the provisions of this Agreement (including but not limited to a breach of representations and warranties) or of the law; and (e) a Security Incident related to the Software, to the extent not caused by the negligence or intentional tortious acts of

the City. Licensor shall defend, indemnify and hold the Indemnitees harmless regardless of whether or not the alleged infringement or Security Incident arises out of the use of the Software in a manner not expressly contemplated in the EULA or in combination with any hardware, equipment or other software not provided or authorized by Licensor. Insofar as the facts or the law relating to any claim would preclude an Indemnitee from being completely indemnified by the Licensor, such Indemnitee will be partially indemnified by the Licensor to the fullest extent permitted by the law. The parties agree that there are no exclusions from this indemnification obligation. The obligations provided for in this paragraph are not intended to limit or otherwise diminish any other right to defense and/or indemnification that any indemnitee may be due from Licensor or any other entity, under any agreement or otherwise.

7.2 No Indemnification by the City. Any provision in any separate agreement requiring the City to provide indemnification is hereby deemed to be void and unenforceable.

8. Limitations of Liability

8.1 Neither Party shall be liable to the other Party for indirect, incidental, consequential, exemplary, reliance, special or similar damages, including damages for lost profits, regardless of the form of action, with regard to or arising out of the use or provision of the Software, Hardware or any other conduct under this EULA. Any provision in any other agreement limiting or disclaiming Licensor's liability is hereby deemed to be void and unenforceable.

8.2 Subject to the provisions of Section 8.3 below, each Party's aggregate liability for all claims arising out of the EULA, whether in contract, tort or otherwise, shall not exceed the greater of: (i) forty-eight (48x) times the average monthly charges paid by the City to the Licensor (or Reseller, if any), calculated over the prior twelve (12) month period immediately preceding the date on which liability for the claim first arose; (ii) three times (3x) the contract value; or (iii) one million dollars ($1,000,000).

8.3 The limitations of liability set forth in Sections 8.1 and 8.2 above will not apply to Licensor's liability arising out of any of the following: (i) Licensor's defense and indemnification obligations under this Agreement; (ii) Licensor's breach of the confidentiality provisions of this Agreement; (iii) the infringement by Licensor, or any of its Affiliates or subcontractors, of the intellectual property of the City or of a third party; (iv) Licensor's breach of any warranty; (v) Licensor's security obligations or a Security Incident; and (vi) to the extent prohibited by law.

8.4 To the extent that Licensor may be liable to the City for any action, inaction or operation of Licensor under this Agreement, or under statutory or common law, for which a Reseller may also be liable, Licensor's and the Reseller's (if any) liabilities are joint and several, and the City is not limited in its ability to seek recourse from one or the other.

9. Use of Third-Party / Open Source and Licensor Employees/Agents

9.1 Licensor is solely responsible for all third-parties (e.g., contractors, subcontractors, and Affiliates) it involves in the provision of the Software and Hardware. Licensor must identify any of its third-party entities and these third-party entities must be approved by the City.

Regardless of City approval, Licensor shall be liable to the City for any and all third-party claims to at least the same extent as the third party would be liable had it agreed to the terms set forth in this EULA. Licensor shall ensure all of its third parties comply with this EULA. Licensor shall be liable for the breach of any of the terms of this EULA by Licensor, by its subcontractors or any third party performing any work on behalf of Licensor.

9.2 Licensor is also solely responsible for all third-party resources and components it includes in the Software or Hardware, including but not limited to Open Source Software. Licensor agrees to comply with all applicable law regarding inclusion of third-party resources and components in the Software and Hardware licensed to the City.

9.3 Any subcontractor or Affiliate of Licensor that provides any software or services in connection with the Software is deemed to be a subcontractor whose subcontracts must be approved in writing by the City.

9.4 Licensor shall also ensure that all employees, consultants and other agents of Licensor comply with this EULA.

10. PPB RULES

The City of New York Procurement Policy Board Rules ("**PPB Rules**") apply, including but not limited to, in the event Licensor has a dispute with the City.

11. City Data

11.1 The City retains sole ownership and intellectual property rights in all City Data. Licensor does not have the right to retain or use any City Data other than as provided in this EULA. The City hereby retains all right, title, and interest in/to any suggestion, enhancement request, recommendation, correction or other feedback provided to Licensor relating to the Software ("**Feedback**"), except that Licensor may use that information in connection with the provision of the Software to the City. All Feedback is provided as-is and the City disclaims any and all warranties whatsoever.

11.2 Licensor may not use, access, or perform any analyses of City Data or any Usage Data, whether anonymized or aggregated or both, except as agreed to in writing by the City in its discretion, in the performance of the Software, or as required for the Licensor to provide support to the City.

11.3 The City hereby retains all right, title, and interest in and to any suggestion, enhancement request, recommendation, correction or other feedback provided to Licensor relating to Licensor's Software, except that Licensor may use such information in connection with its provision of Software to the City. Any feedback from the City is provided "as is", and the City disclaims any and all warranties whatsoever.

11.4 Except as expressly provided in this Agreement, no ownership right or license to use, sell, exploit, copy or further develop City Data, any confidential information or Intellectual Property of the City is conveyed to Licensor.

12. Data Privacy and Information Security Program

12.1 Without limiting Licensor's obligation of confidentiality, as further described in this Agreement, Licensor shall be responsible for establishing, implementing, using, and maintaining a data privacy and information security program ("**Program**") that includes reasonable and appropriate physical, technical, administrative, and organizational safeguards, to: (a) ensure the SCIA of City Data; (b) protect against any anticipated threats or hazards to the SCIA of City Data; and (c) protect against unauthorized or illegal or accidental disclosure, access to, destruction, alteration, modification, loss, acquisition or use of City Data. (d) ensure the proper disposal of City Data, if requested by the City or required by applicable law; and, (e) ensure that all employees, agents, third-party providers, and subcontractors of Licensor comply with all of the foregoing. Licensor shall submit its Privacy and Security Program to the City, and in no case shall the safeguards of such Privacy and Security Program be less stringent than the safeguards used by the City, or such other safeguards as shall be approved by Citywide Chief Information Security Officer in writing.

12.2 Security Controls. Licensor's privacy and security controls must include, but not be limited to, physical, administrative, software, and network security measures, employee screening, employee training and supervision, and appropriate agreements with employees and subcontractors.

12.3 No less than annually, Licensor shall conduct a comprehensive audit of its Program and provide such audit findings to the City.

12.4 Authorization and Access. Licensor's access controls must enforce least privilege, separation of duties, and role-based security as defined in NIST. Licensor shall also ensure prompt deprovisioning of resources.

13. Confidentiality

13.1 The EULA does not convey to either Party any ownership right or license to use, sell, exploit, copy or further develop the other Party's confidential information or intellectual property, including patents, copyrights, trademarks, trade names and trade secrets.

13.2 Licensor agrees to hold confidential, both during and after the completion or termination of this EULA, all City Data except to the extent Licensor can demonstrate by written evidence that (a) the City Data is part of the public domain other than through actions that constitute a breach of this Agreement or fault by Licensor or Licensor's Representatives (defined below), or (b) the City, in writing, expressly authorized disclosure of the City Data in the manner and for the purpose it was actually disclosed.

13.3 Licensor agrees to use the same degree of care to protect City Data from disclosure that it uses to protect its own highly confidential information, but in no event may Licensor use less than best efforts. Licensor shall notify Licensee in writing promptly upon discovery of any unauthorized use or disclosure of City Data or any other breach of these confidentiality provisions, and will use best efforts in cooperation with the Licensee to regain possession of

all City Data, to prevent any further disclosure or unauthorized use, and to mitigate related harm.

13.4 Licensor agrees that the City Data shall not be made available to any person or entity without the prior written approval of the City, except that Licensor may disclose the City Data to its employees, officers, agents and consultants ("**Representatives**") on a need-to-know basis and only to provide support and services (including the functionality of the Software and Hardware) to the City. Licensor shall ensure that its Representatives are bound by confidentiality obligations no less stringent than those in this EULA and shall be liable for a breach by its Representatives of the foregoing confidentiality obligations.

13.5 The obligation under this section not to disclose City Data shall not apply where Licensor is legally required to disclose City Data ("**Disclosure Demand**"), provided that Licensor: (a) provides advance notice to the Commissioner, in writing or by e-mail, that it received a Disclosure Demand to disclose such reports, information, or data, (b) provides the Licensee with a copy of the Disclosure Demand, (c) shall not disclose City Data until the Licensee has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such data, and (d) uses best efforts in cooperating with the Licensee in minimizing the City Data disclosed. The previous sentence shall not apply if Licensor is prohibited by law from disclosing to the City the Disclosure Demand.

13.6 Upon the request of the Licensee, Licensor shall cease using and promptly return to the Licensee all tangible or electronic copies of any City Data in Licensor's (or Licensor's Representatives) possession or control. Licensor shall also ensure the proper disposal of City Data, if requested by the City or required by applicable law.

14. Security Requirements

14.1 Licensor shall comply with all data privacy, trans-border data flow and data protection laws and regulations and industry standards (e.g., PCI DSS) that are applicable to the Software and Hardware licensed to the City, including the provision of all critical security updates and patches.

14.2 Vulnerabilities in the Software. Licensor's Software, including any third-party software embedded in the Software must be free from vulnerabilities and defects. Licensor must conduct vulnerability scanning as often as required by law, relevant policy, to maintain certification(s), and in response to the Department of Homeland Security's critical vulnerability/patch publication(s). Licensor must provide attestation by an objective third party stating the Software has been tested for known security vulnerabilities, including, without limitation, those published by NIST 800-53 and the NIST Cybersecurity Framework. If requested by the City, Licensor shall also provide the City with information about whether it patched critical vulnerabilities and the remediation steps it took.

Licensor shall inform DOITT and Cyber Command of any identified vulnerabilities in the Software no later than ten (10) business days after discovery of the vulnerability. Licensor shall provide a report to DOITT and Cyber Command that includes a detailed description of the identified vulnerabilities and a remedial plan with associated timelines for all actions Licensor has taken or plans to take to rectify the vulnerabilities.

14.3 Updates and Patches. Licensor shall inform DOITT and Cyber Command of any Software patches/updates prior to implementation. Licensor shall ensure it offers the City updates and/or patches regularly and as needed and to address specific issue(s) identified by the City. If requested by the City, Licensor shall provide the City with information about whether it patched critical vulnerabilities or City-identified issue(s) and the remediations steps it took. If requested by the City, Licensor shall provide the City with reports verifying that all patches and configurations are up to date, as well as forecast all required changes for the next twelve (12) months. Licensor shall ensure that all necessary capabilities and equipment potentially required to service critical technology in the event of an incident is locally available. If Licensor offers a new release/version of the Software, the City may continue to use the prior version or revert back to the prior version if the City determines the new release/version is defective (e.g., security compromise).

14.4 Change in Service. Licensor shall notify the City of any change that may impact the security, availability or performance of the Software or City Data. Licensor shall also notify the City of any change in the connection(s) or servers Licensor utilizes to provide updates, patches, upgrades or the like if such change may impact the security of the Software.

14.5 City Security Policies. Licensor shall comply with the applicable policies and standards located at: https://www.nyc.gov/content/oti/pages/vendor-resources/cybersecurity-requirements-for-vendors-contractors, as they may be amended or placed on a successor site by the City.

14.6 Security Review by the City. If requested by the City, Licensor agrees to submit all Software and Hardware to the City for security review required by this EULA. Licensor further agrees to enter into any waiver, permission, and non-disclosure agreement(s) that may be required by the City.

The City's security review may include submission of information into a security assurance tool and submission of Software and Hardware to scanning and/or other testing. Testing may include application scanning (in staging) and/or penetration testing or other applicable testing.

Licensor agrees to the City conducting (a) a penetration test on IOT Device related Software and Hardware, including but not limited to the IOT Device management platform, and (b) testing the Hardware's ability to securely mount the IOT Device, including but not limited to the effectiveness of locking mechanism(s).

If issue(s) are identified during the City's security review, Licensor agrees to remediate as necessary. Licensor understands and acknowledges that failure to satisfy the security obligations in this EULA or remediate is a material breach of this EULA.

The City may require information regarding the development of the Software, including but not limited to chain of custody information related to the Software and security information about its developers. Licensor shall cooperate with the City and provide information as reasonably requested by the City.

Any written disposition of any security review / testing by the City shall not be deemed to constitute an endorsement of the Software or a certification that the Software meets the requirements under this EULA.

14.7 Upon the City's request, Licensor shall provide a copy of its information security policies relevant to the Software and Hardware. Licensee may require additional information regarding Licensor's Software security practices; for example, when Licensor scans the Software for malware. If Licensee requests additional information about the security of the Software, Licensor shall grant any reasonable request.

15. City Audit(s)

The City shall have the right to review and audit the Program and/or Licensor's IT infrastructure and information security controls and processes prior to the commencement of this Agreement and periodically during the term of this Agreement. Licensor shall permit the City to perform such audit, which may include questionnaire(s) and/or relevant tests to ensure compliance with security requirements. City audits may be conducted by the City or a third-party vendor at the City's expense; completed audit reports created pursuant to this paragraph will be shared by the City or City's third-party vendor directly with the City and Licensor. Licensor shall fully cooperate and furnish all requested materials in a timely manner.

16. Independent Review(s) / Audit(s)

16.1 Licensor shall engage a third-party internationally recognized auditor, at Licensor's own cost, to perform periodic audits, scans, and tests at least once per year and after any Security Incident that occurs during the term:

16.1.1 a SSAE 18/SSAE 16/SOC-1, Type II audit and a SOC-2, Type II audit of Licensor's controls and practices relevant to security, availability, processing integrity, confidentiality and privacy of City Data;

16.1.2 ISO 27001 audit (most current version) and Licensor's controls and practices relevant to security, availability, integrity, confidentiality and privacy of City Data;

16.1.3 a CMMC/CMMI audit;

16.1.4 a FedRAMP audit; or

16.1.5 an audit by a federal regulator (e.g., Department of Homeland Security).

16.2 Licensor shall provide DoITT and Cyber Command with a copy of all unredacted reports generated for each audit, scan, and test within 10 days after its completion. Each report must: **(A)** indicate whether any material vulnerabilities, weaknesses, gaps, deficiencies, or breaches were discovered; and **(B)** if so, describe the nature of each vulnerability, weakness, gap, deficiency, or breach. Licensor shall, at its own cost and expense, promptly remediate each vulnerability, weakness, gap, deficiency, or breach that is identified in a report. Licensor shall provide the City with documentation of the remedial efforts within ten (10) days after their completion.

17. Self-Reporting Requirements

Should Licensor learn or suspect that there has been a breach of its security obligations under this EULA or of a change that results in noncompliance with applicable law, by Licensor or any of its third parties, Licensor shall immediately notify the City at soc@oti.nyc.gov, soc@cyber.nyc.gov, and any additional or different e-mail address provided for that purpose. Licensor shall then cooperate fully in any government investigation into any such possible breach and the notice shall include the following:

17.1. Date of discovery;
17.2. How the noncompliance was identified;
17.3. Nature of the noncompliance;
17.4. Scope of noncompliance; and
17.5. Corrective actions with associated timelines.

18. Remote Access Methods

Licensor must obtain written permission from the City for each instance of remote access it wishes to use to access City Information Assets. For the avoidance of doubt, if Licensee authorized automatic updates, Licensor is still required to comply with this section (Remote Access Methods) to ensure the connection continues to be secure prior to each update.

19. Encryption

19.1 Licensor shall encrypt all City Data, including backups, while at rest and in transit from end to end using encryption standards and methods that are approved and recommended by the National Institute of Standards and Technology ("**NIST**") and, is applicable, FIPS 140-1 and FIPS 140-2 or their successors.

19.2 The use of proprietary encryption algorithms is not allowed for any purpose, unless reviewed by qualified experts outside of Licensor and approved in writing by the Chief Information Security Officer for the City of New York Proven algorithms such as those approved by NIST as listed in their Cryptographic Standards and Guidelines, or as defined in the NYC Encryption Standard must be used as the basis for encryption technologies. Algorithms must be implemented in a secure manner, as defined by NIST in their Cryptographic Standards and Guidelines, or as defined in the NYC Encryption Standard.

19.3 For password hashing, PBKDF2, Scrypt and Bcrypt or better must be used. Approved encryption algorithms must be of a minimum key length of 128 bits.

19.4 Shared keys used for IPSec tunnels must be complex, randomly generated pursuant to Section 19.5, and not be stored for later reference. During initial setup of an IPSec tunnel, the shared key must be transmitted out of band to the other party involved. Licensor must utilize cryptographic algorithms that are acceptable to the City.

19.5 Random number generation shall be compliant with NIST SP 800-90A and FIPS 140-2. Furthermore, it shall meet the requirements of the draft NIST SP 800 90B and C. NIST resources are available at https://csrc.nist.gov/.

19.6 Digital Certificates that validate and secure communications used by the general public must be generated by trusted third-party providers. Certificates that validate communications used by internal City of New York employees or business partners and/or web applications can be generated by the Citywide CITYNET Certificate Authority (internal PKI) or third-party providers. DOITT is responsible for managing and operating Citywide CITYNET Certificate Authority. For internal City of New York namespaces DOITT must generate digital certificates through the Citywide Certificate Authority (internal PKI), whereas for external namespaces trusted third-party providers must be used.

20. Security Incident

20.1 Security Incident. In the event of a Security Incident, Licensor shall:

20.1.1 notify the NYC Cyber Command Citywide Security Operations Center ("**Cyber Command Citywide SOC**") by telephone at (718) 403-6761 within 24 hours.

20.1.2 notify the Cyber Command Citywide SOC within 48 hours by written notice to SOC@cyber.nyc.gov and SOC@oti.nyc.gov, summarizing, in reasonable detail, the nature and scope of the Security Incident (including a description of all impacted City Data and City Technology Assets) and the corrective action already taken or planned by Licensor, which shall be timely supplemented to the level of detail reasonably requested by the City, inclusive of relevant investigation or forensic reports.

20.1.3 promptly, at its own cost and expense, take all reasonable and necessary actions to confirm, contain and end the Security Incident, mitigate its impact to the City, and prevent recurrence.

20.1.4 not delete any impacted virtual/cloud instances or re-image any impacted systems without prior consultation and agreement with Cyber Command.

20.1.5 cooperate with the City in the investigation of the Security Incident, including promptly responding to the City's reasonable inquiries and providing prompt access to all evidentiary artifacts associated with or relevant to the Security Incident, such as relevant records, logs, files, data reporting, and other materials.

20.1.6 permit the City, in its sole discretion, to immediately suspend or terminate Licensor's right to create, process, access, transfer, store, or dispose of City Data or operate City Technology Assets.

20.1.7 not inform any third party that the Security Incident involves City Technology Assets or Data without first obtaining the City's prior written consent, except to the extent required by law or by third parties engaged by the Licensor to remediate the Security Incident.

20.1.8 collaborate with the City in determining whether to provide notice of the Security Incident to any person, governmental entity, the media, or other Party, and the content of any such notice. The City will make the final determination as to whether notice will be provided and to whom, the content of the notice, and which Party will be the signatory to the notice.

20.1.9 in the case of Protected Health Information or Electronic PHI ("**PHI/e-PHI**"), as defined in 45 CFR §160.103, or in the case of Personal Identifying Information, as defined in Section 10-501(a) or its successor of the Administrative Code of the City of New York ("**PII**"), at the City's request and pursuant to the City's express instructions as to form, content, scope, recipients, and timing, notify the affected individuals as soon as practicable but no later than required to comply with applicable law.

20.1.10 in the case of PHI/e-PHI or PII, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law, or, in the absence of any legally required period for monitoring services, for no less than twelve (12) months following the date of notification to such individuals.

20.1.11 bear the responsibility and all related costs for any Security Incident to the extent that the City is not at fault or caused by a vulnerability in the Licensor's Software, product(s) or system(s), including the cost of any associated remedial actions or mitigation steps, consumer notification and related responses, credit monitoring, notification, regulatory investigations, fines, penalties, enforcement actions and settlements.

20.1.12 promptly notify the City of any investigations of its data use, privacy or cybersecurity practices, or a Security Incident by a governmental, regulatory or self-regulatory body.

20.2 Termination for Security Incident. In the event of a Security Incident that is caused by Licensor's failure to comply with this Agreement, the Department may terminate the Software Services on no less than fifteen (15) days' prior written notice. The consequences under Section 22.3 shall apply.

20.3 Notice in Event of Licensor Receipt of Warrant, Subpoena, or other Governmental Request. If Licensor is served with a warrant, subpoena or any other order or request from a court or government body or any other person for any City Data, Licensor shall, as soon as reasonably practical and not in violation of law, deliver a copy of such warrant, subpoena, order, or request to the Department.

21. Notification

To Cyber Command regarding Security Incidents: soc@cyber.nyc.gov, soc@oti.nyc.gov, vuln@cyber.nyc.gov and 718-403-6761

To Cyber Command regarding anything other than Security Incidents: CISO@oti.nyc.gov

TO DOITT: [INSERT]

TO LICENSOR: [INSERT]

22. Termination by The City

The City may terminate this Agreement as follows:

22.1 Termination for Cause. Immediately, if Licensor commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after the City notifies Licensor in writing of such breach; or

22.2 Termination for Convenience. With or without cause by giving Licensor fifteen (15) days prior written notice of termination. In the event of a termination under this Section 22.2 (Termination for Convenience), the City shall pay to Licensor the total undisputed amounts due and which accrued under this Agreement as of the termination date.

22.3 Termination Consequences. In the event the City terminates pursuant to Section 22.1 (Termination for Cause), all fees for Support/Maintenance provided after the date of the breach will be waived by Licensor and Licensor shall, within the following thirty (30) days, refund any waived fees that have been prepaid for Software Support/Maintenance. This provision is in addition to any rights that the City may have to recover damages under this Agreement or pursuant to applicable law.

23. Termination by Licensor

Licensor may not suspend, downgrade, or terminate the support/service/licenses during the term. In the event of an alleged breach of this Agreement by Licensee, (a) Licensor shall notify Licensee of the breach, in writing, with specificity, and (b) if Licensee cannot cure or mitigate a material breach within a mutually agreeable time period, which shall be no less than 180 days from Licensor's proper notification to Licensee, Licensor shall engage in the dispute resolution procedures described in the PPB Rules.

24. Source Code Escrow

Upon the City's acceptance of the Software, the Licensor shall deliver the Software source code and configuration(s) to an escrow agent pursuant to a mutually agreed upon escrow agreement setting forth source code escrow deposit procedures, source code release procedures, and testing and review of such escrow. The Licensor shall ensure that the terms of the escrow agreement provide in the event Licensor: (a) becomes insolvent or bankrupt, (b) makes an assignment for the benefit of creditors or enters into a merger, or (c) voluntarily or involuntarily initiates bankruptcy, insolvency, or reorganization proceedings, (d) breaches the Agreement, or (e) terminates the Agreement, then the City shall have the right to so certify such to the escrow agent and direct the escrow agent to automatically provide the City with a copy of the source code and configuration(s).

25. Separation Assistance / Sunsetting / End of Life / Transition Support

Licensor shall not sunset the Software during the term, as stated in the separate purchase order or purchasing agreement. In the event the Software reaches end of life and/or Licensor elects to sunset the Software, Licensor shall utilize best efforts to expeditiously reach a mutual agreement with regards to providing continued support and/or licensing as requested by Licensee to safely sunset the Software. In the event the parties do not reach a mutual agreement prior to the expiration of any existing order or agreement and Licensee wishes to continue to utilize the Software and/or support, Licensor shall grant Licensee at least two (2) years of continued licensing and/or support as requested by Licensee. Licensee shall pay for such Software and/or support at either (a) the rates and terms negotiated in the new agreement, or (b) if no new agreement is finalized, the rates and terms in the just-expired agreement.

Licensee may seek (a) separation assistance in the form of assistance exporting and/or copying City Data, destroying city data, removing the Software, etc. and/or (b) transition support in the form of assistance migrating data, exporting configurations, etc. In the event of a termination by the City due to breach by Licensor, Licensor shall, at no cost to the City, provide separation assistance and/or transition support to the City as requested by the City.

26. Renewal

In the event the parties are negotiating a renewal contract, Licensor shall not discontinue or downgrade Support/Maintenance or decrease Software or Hardware functionality due to a lapse in the applicable term(s).

27. Governing Law; Jurisdiction and Venue

The laws of the State of New York, without reference to its choice of law principles, govern the EULA and any claims arising out of or relating to the EULA, its negotiation, execution, performance, or breach. All disputes and controversies arising out of or relating to the EULA must be resolved in the New York State or federal courts in the City, County and State of New York, and each Party irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of disputes and waives all objections thereto. Other than as set forth in the PPB Rules, no dispute, controversy or claim arising out of or relating to the EULA or the enforcement, breach, termination or validity thereof shall be submitted to arbitration or similar dispute resolution method.

28. Publicity

Licensor shall notify the City, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. Licensor may not issue any statement or submit any material for publication that includes confidential information. Licensor shall not use the City's name and trademarks without the City's prior written consent.

29. No Additional Terms Permitted

To be valid and binding on the City, terms and conditions must bear the written signature of the Commissioner or a Deputy Commissioner of DOITT or designee. The terms and conditions of this EULA are in static form; no online terms and conditions referenced or hyperlinked are binding on Licensee. In addition, no shrink-wrap, click-wrap, click-through, or other end user terms and conditions that are embedded in or provided with any Software are binding on Licensee, even if use of Software requires an affirmative acceptance of those terms.

30. Headings

Headings are inserted only as a matter of convenience and for reference and in no way define, limit, augment or describe the scope or intent of this EULA.

31. Additional Terms for IOT Devices Installed Outside:

Licensor represents and warrants the IOT Device is NEMA certified and has a rating of 45 or better. During the City's security review process (or earlier), Licensor will provide the City with the applicable NEMA rating and datasheet for the IOT Device. Licensor will provide a five (5) year warranty, which (a) starts from the later of the date of purchase or the date of installation, and (b) includes replacement if the IOT Device is damaged within the warranty period. Licensor will ensure that the IOT Device includes all Hardware required to securely mount the IOT Device, including but not limited to appropriate locking mechanisms.

If Licensor provides any other customer with an automated remote update mechanism, Licensor will provide the City with the automated remote update mechanism (that will allow for updates of all of the same IOT Devices purchased by the City) at no additional cost.

32. Capital Funding

32.1 Notwithstanding any provision of this Agreement, for any purchase of one or more licenses using capital funding:

32.2 the term of each order must include a three (3) year or more useful life, which period must be in addition to any time during which the Software is being modified, configured or offline prior to use;

32.1.1 payment for the entire term will be made at commencement of the term (i.e., upon execution of the order);

32.1.2 Licensor shall not discontinue or suspend the licenses at any time during the term of the order; and

32.1.4 neither Party may terminate the order during the term other than:

32.1.4.1 Licensor, for cause, if Licensee breaches its obligations with respect to Licensor's intellectual property rights, and such breach is material and not cured within sixty (60) days after Licensee is noticed of the breach.

32.2.1 Licensee, for cause, in the event of chronic failure of the Software to perform consistent with the performance specifications; or a failure that lasts more than thirty (30) days after Licensor is notified of the failure.

32.1.4.2 Licensee, for cause, in the event of a material failure by Licensor to meet its security obligations under the Agreement.

32.3 Purchases of additional licenses for Software already in use must independently satisfy each of these requirements.

33. Insurance Provisions

33.1 **Data Breach and Privacy Cyber Liability**. Licensor shall maintain at all times during the provision of Software for the term of any order and as otherwise required herein, data

breach and privacy cyber liability insurance with limits of no less than $10,000,000 per claim and $20,000,000 in the aggregate. This policy must include coverage for:

33.1.1 failure to protect confidential information, including personally identifiable information;

33.1.2 failure of the security of Licensor's computer systems;

33.1.3 failure of the security of the City's systems or City Data due to the actions or omissions of Licensor;

33.1.4 data breach expenses, including forensic services, the cost of complying with privacy laws and regulations, cost of undergoing regulatory examinations and defending regulatory actions, including legal representation, cost of internal investigation to determine the cause of the breach, notification costs, public relations and crisis management costs, credit monitoring, fraud consultation, credit freezing, fraud alert, and identity restoration services;

33.1.5 costs arising from cyber extortion threats, including the payment of ransom demands;

33.1.6 the alteration, loss, corruption of data, including costs to recover, correct, reconstruct, and reload lost, stolen, or corrupted data;

33.1.7 the cost of replacing, repairing, or restoring computer systems, including hardware (including laptops and mobile devices), software, networking equipment, and storage;

33.1.8 costs arising from an attack on a network or computer system, including denial of service attacks, malware, and virus infections;

33.1.9 dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons;

33.1.10 media liability; and

33.1.11 cyber theft of customer's property, including but not limited to money and securities.

33.2 **Technology Errors and Omissions**. Licensor shall maintain at all times during the provision of Software for the term of any order and as otherwise required herein, technology errors and omissions insurance covering Licensor in the amount of at least $10,000,000 per occurrence and $20,000,000 in the aggregate for damages arising from computer related services, including, but not limited to, one or any combination of the following: (a) consulting, (b) data processing, (c) programming, (d) system integration, (e) hardware development, (f) software development, (g) installation, (h) distribution or maintenance, (i) systems analysis or design, (j) training, (k) staffing or other support services, (l) cloud computing services, and (m) any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. This policy must include coverage for third-party fidelity, including cyber theft.

33.3 **General Insurance Requirements.**

33.3.1 All required insurance policies must be maintained with companies that may lawfully issue the policy and have an A.M. Best rating of at least A- / "**VII**" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

33.3.2 All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

33.3.3 All insurance policies shall cover the City, together with its respective officials and employees, as additional insured.

33.3.4 The City's limits of coverage for all types of insurance required under this Article shall be the greater of (a) the minimum limits required in this Agreement, or (b) the limits provided to Licensor as named insured under all primary, excess, and umbrella policies of that type of coverage.

33.3.5 If Licensor receives notice from an insurance company or other person that any insurance policy required under this Agreement shall expire or be cancelled or terminated for any reason, Licensor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

33.3.6 Insurance coverage in the minimum amounts required in this Article shall not relieve Licensor or its subcontractors of any liability, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it.

33.3.7 Licensor waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Software.

33.3.8 All claims-made policies must have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, Licensor shall purchase extended reporting period coverage effective on cancellation or termination of the claims-made insurance unless a new policy is secured with the same retroactive date as the expired policy.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

LICENSOR:_____
RESELLER (if any):_____
CONTRACT PIN:_____

ACKNOWLEDGED AND ACCEPTED BY:

Licensor: _____

Name: _____

Title: _____

Date: _____

Licensee: City of New York_____

Name:_____

Title: _____

Date:_____

LICENSOR:_____
RESELLER (if any):_____
CONTRACT PIN:_____

SUPPORT/MAINTENANCE ATTACHMENT

1. INTRODUCTION

This attachment to the Agreement describes the Support/Maintenance commitment by [**Licensor name**] to the City and will apply during any period for which Support/Maintenance is purchased by the City.

2. DEFINITIONS

2.0 "**Defect**" means a malfunction of the Software resulting in functionality differing from expected functionality as designed or a failure of the Software to operate in accordance with its documentation, the Agreement and this support attachment.

2.1 "**Software Patch**" means a fix to one or more Defects.

2.2 "**Severity Level**" means the level assigned to a reported Defect by the City based on the description of the Defect under this support attachment.

2.3 "**Problem**" means a suspected or known Defect.

2.4 "**Response Time**" means the response time linked to the relevant Severity Level as set forth in this support attachment.

2.5 "**Resolution Time**" means the resolution time linked to the relevant Severity Level as set forth in this support attachment.

2.6 "**Service Credits**" means the support services fees credited to the City as set forth in this support attachment.

2.7 "**Severity 1**" means a Defect that _____.

2.8 "**Severity 2**" means a Defect that _____.

2.9 "**Severity 3**" means a Defect that _____.

2.10 "**Severity 4**" means a Defect that _____.

2.11 "**Support Fee**" means the amount paid by the City to Licensor (or Reseller) for the procurement of support for the Software.

2.12 "**Ticket**" means any report to Licensor of a Problem.

3. SUPPORT/MAINTENANCE

3.0 Licensor shall perform its support obligations during the following days and times:

3.0.1 Twenty-four (24) hours a day, seven (7) days a week for Severity 1 and 2 Defects; and

3.0.2 Business Days, 8:00 AM to 12:00 AM EST for all other Severity Levels.

3.1 All support (including remote support) must be provided by Licensor from the United States.

3.2 Licensor shall provide the following support services:

3.2.1 Technical support, which shall include assisting the City in its use of the Software, resolving technical Defects, and communicating relevant information regarding the Software;

3.2.2 Administrative support, which shall include troubleshooting assistance and responses to general inquiries; and

3.2.3 Provision of documentation, which shall include incident reports and reports on Licensor's compliance with Response Time and Resolution Time requirements under this support attachment.

4. SUPPORT REQUESTS

4.0 Licensor will grant access to a system or another method where the City can easily communicate Problems and questions to the Licensor.

4.1 If the City encounters a Problem, the City shall (a) diagnose and reasonably assign a Severity Level to the Problem; and (b) send a support request (Ticket) to Licensor.

5. INCIDENT MANAGEMENT

5.0 If Licensor discovers a Problem before the City does, Licensor must diagnose and reasonably assign a Severity Level to the Problem. The City may require that the Problem be assigned a different Severity Level. Licensor may advise the City and dispute the City's determination.

5.1 Licensor must investigate and respond to a Problem in accordance with the applicable Severity Levels and Response Times.

5.2 Licensor must rectify a Defect in accordance with the applicable Severity Levels and Resolution Times.

5.3 Severity Level, Response and Resolution Times:

Severity Level	Response Times	Resolution Times
Critical (1)		
Major (2)		
Medium (3)		
Minor (4)		

Parties can mutually agree in writing to modify the Resolution Times.

5.4 The Response Time shall be calculated from the moment a Ticket is initiated or Licensor learns of the Problem until a qualified representative of Licensor connects with the City representative who initiated the Ticket or another qualified City Representative.

5.5 Resolution Time shall be calculated as the time between the initiation of the Ticket by the City or Licensor learns of the Problem and the time the Licensor either (a) makes available to the City a Software Patch that will resolve the Defect, (b) makes available detailed and sufficient instructions to the City to rectify the Defect, or (c) makes available detailed and sufficient instructions to the City for a viable workaround. Sufficiency is determined by the City.

5.6 If the Licensor fails to provide the incident management services within the times set forth in this support attachment, the City is entitled to claim Service Credits as follows:

Severity Level	**Qualification Period**	**Service Credit**
(1) Critical	Each day or part of a day that the applicable response and resolution time has been missed.	$___ per day or partial day.
(2) Major	Each day or part of a day that the applicable response and resolution time has been missed.	$__ per day or partial day.
(3) Medium	Each day or part of a day that the applicable response and resolution time has been missed.	$__ per day or partial day.
(4) Minor	N/A	N/A

5.7 Failure on the part of the Licensor to provide a correction or a workaround for a Severity 1 or Severity 2 Defect within seven (7) consecutive days provides the City with the option to engage a third-party to consult on and/or fix the issue, while preserving the City's right to terminate in accordance with the Agreement.

5.8 Additional Information:

5.8.1 Maximum number of support incidents per year: unlimited

5.8.2 Licensor Support Contact Information:

1. Phone:
2. E-Mail:
3. Web:
4. Other: