

**City and County of San Francisco  
Purchasing Department  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**LICENSE AGREEMENT FOR ONLINE CONTENT PROVIDER**

**[INSERT NAME OF LICENSOR]**

This License Agreement for Online Content Provider Agreement (the "Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, in the City and County of San Francisco, State of California, by and between \_\_\_\_\_ hereinafter referred to as "Licensor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "Licensee," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

**Recitals**

WHEREAS, Licensor is the provider of certain content and information which is published by Licensor and made digitally accessible via the Internet or private network access to Authorized Users, and

WHEREAS, the **[name of department]** ("Department") wishes to make these materials available to its staff ;

Now, THEREFORE, the parties agree as follows:

**1. Definitions**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement. "Agreement" means this document and any attachments, appendices and exhibits, including the License Agreement of **[insert name of Licensor]**.

Authorized Users. "Authorized Users" means all persons holding a valid ID and password issued by the **[name of department]**.

Licensed Materials. "Licensed Materials" means the content and information published by Licensor, as set forth in Appendix A, "Description of Licensed Materials," and made accessible to Authorized Users under this Agreement.

Unless otherwise stated, whenever the words "as directed," "as required," "as permitted," shall be understood as the direction, requirement, or permission of the **[name of department]**. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the **[name of department]** unless otherwise indicated by the context.

**2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the Licensee's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of Licensee's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to Licensee at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The Licensee will use its best efforts to provide Licensor with prior notice of such termination. Licensee has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Licensee's budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Licensor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3. Term of the Agreement.** The license granted under this Agreement shall commence upon approval of the Licensed Materials by the **[name of department]** and shall continue for **[insert number of years]** years unless sooner terminated in accordance with the provisions of this Agreement. The Term of this Agreement shall be from **[insert beginning and end dates and include option to extend and its terms if applicable]**.

**4. Effective Date of the Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Licensor has been notified in writing.

**5. Grant of License.** Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and the right to provide the Licensed Materials to Authorized Users in accordance with this Agreement. Licensee acknowledges that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor and/or its suppliers. Neither Licensee nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

## **6. Delivery/Access of Licensed Materials to Licensee**

Licensor will provide the Licensed Materials to the Licensee in the following manner:

Network Access. The Licensed Materials will be stored at one or more Licensor locations in digital form accessible by telecommunications links between such locations and authorized networks of Licensee.

**7. Compensation.** Compensation shall be due and payable within forty-five (45) days of the date of invoice. In no event shall the amount of this Agreement exceed **[insert whole dollar amount in numbers and words – no pennies]**. The breakdown of costs associated with this Agreement is provided for in Appendix B "Calculation of Charges." This amount is a fixed fee for all services under this Agreement. No charges shall be incurred under this Agreement nor

shall any payments become due to Licensor until Licensed Materials required under this Agreement are received from Licensor and approved by [name of department] as being in accordance with this Agreement. Licensee may withhold payment from Licensor in any instance in which Licensor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall Licensee be liable for interest or late charges for any late payments.

**8. Invoice Format.** Invoices shall be furnished annually by Licensor each year of this Agreement and must be in a form acceptable to the Controller and the [name of department]. All amounts paid by Licensee to Licensor shall be subject to audit by Licensee. Payment shall be made annually by Licensee to Licensor as shown in Appendix B at the address specified in the section entitled "Notices to the Parties."

**9. Authorized Uses.** Notwithstanding anything to the contrary in this Agreement, no term or provision of this Agreement shall be interpreted to limit or restrict the rights of Licensee and its Authorized Users, including Fair Use Rights, as provided by U.S. Copyright Act Sections 107 and 108 and other applicable intellectual property law. Notwithstanding anything to the contrary in this Agreement, Authorized Users shall not be restricted from extracting or using information contained in the Database for its municipal purposes, nonprofit educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis, if not engaged in for the purposes of commercial competition.

## **10. Access by and Authentications of Authorized Users**

a. IP Addresses. Authorized Users shall be identified by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensor.

b. Passwords. Authorized Users shall be identified and then authenticated by the use of their employee ID and pin number assigned by Licensee.

## **11. Specific Restrictions on Use of Licensed Materials**

a. Unauthorized Use. Except as specifically provided elsewhere in this agreement, Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

b. Removal of Copyright Notice. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

c. Commercial Purposes. Other than as specifically permitted in this Agreement, Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

## **12. Licensor Performance Obligations**

a. Availability of Licensed Materials. After the [name of department] has received and approved the Licensed Materials, Licensor shall make the Licensed Materials available to Authorized Users.

b. Documentation. Licensor will provide and maintain help files and other appropriate user documentation.

c. Support. Licensor will offer activation support, including assisting with the implementation of any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax for feedback, problem-solving, or general questions.

d. Training. Licensor will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensor software.

e. Quality of Service. Licensor shall use reasonable efforts to provide continuous service. Permissible down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

f. If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total payment owed by Licensee under this Agreement.

g. Notification of Modifications of Licensed Materials. Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted by Licensor and/or that portions of the Licensed Materials may migrate to other formats. Licensor shall give prompt notice of any such modifications to Licensee. If the Licensor fails to provide such reasonable notice, Licensee may treat the failure as a material breach of this Agreement. If any modifications render the Licensed Materials less useful to the Licensee or its Authorized Users, the Licensee may treat such modifications as a material breach of this Agreement. Licensor will provide, for the use of Licensee and Authorized Users, whatever improvements, enhancements, extensions and other changes to the Licensed Materials Licensor may develop.

h. Continued Training. Licensor will provide regular system and project updates to Licensee as they become available. Licensor will provide additional training to Licensee's staff made necessary by any updates or modifications to the Licensed Materials or any Licensor software.

i. Notice of "Click-Through" License Terms or Other Means of Passive Assent. For Authorized Users, this Agreement shall expressly supersede any click-through, click-on, "Screen Wrap" or other user agreement appearing on the Licensor's site. Licensor will not require any authorized Licensee user to agree to any other terms or conditions not included in this written contract. Violation of this provision constitutes a material breach of this Agreement.

j. Compliance with Americans with Disabilities Act. Licensors will provide content in a manner that complies with the Americans with Disabilities Act (ADA).

k. Withdrawal of Licensed Materials. Licensors reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. Licensors shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item pursuant to this section. If any such withdrawal renders the Licensed Materials less useful to Licensee or its Authorized Users, Licensors shall reimburse Licensee in an amount that the withdrawal is proportional to the total payment owed by Licensee under this Agreement.

l. Usage Data. Licensors shall provide to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users according to the then current standards in the industry.

### **13. Mutual Performance Obligations**

a. Confidentiality of User Data. Licensors agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

b. Implementation of Developing Security Protocols. Licensors shall implement security and control protocols and procedures as they are developed by Licensors during the term of this Agreement.

**14. Warranties: Right to Grant License.** Licensors warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

**15. Hold Harmless and Indemnification.** Licensors shall indemnify and save harmless Licensee and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Licensors, or loss of or damage to property, arising directly or indirectly from Licensors's performance of this Agreement, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Licensee, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Licensee and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Licensors, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Licensee's costs of investigating any claims against the

Licensee. In addition to Licensor's obligation to indemnify Licensee, Licensor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Licensee from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Licensor by Licensee and continues at all times thereafter.

**16. Intellectual Property Hold Harmless and Indemnification.** The Licensor shall indemnify and hold Licensee and Authorized Users harmless from all losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, court costs and all other litigation costs, which arise from any claim by any third party of an actual or alleged infringement of copyright, patent right, trade secret, trade name, trademark, service mark, or any other right in intellectual property arising out of the use of or access to the Licensed Materials by the Licensee, or any of its officers, employees or agents, or by any Authorized User. This indemnity shall survive the termination of this agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

**17. Guaranteed Maximum Costs.** The Licensee's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the Licensee are not authorized to request, and the Licensee is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the Licensee are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**18. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**19. Taxes.** Licensor shall be responsible for payment of taxes. Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Licensor, if applicable.

## 20. Insurance

a. Without in any way limiting Licensor's liability pursuant to the "Indemnification" section of this Agreement, Licensor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4. Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1. Name as Additional Insured the Licensee and County of San Francisco, its Officers, Agents, and Employees.

2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Licensor hereby agrees to waive subrogation which any insurer of Licensor may acquire from Licensor by virtue of the payment of any loss. Licensor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Licensor, its employees, agents and subcontractors.

d. All policies shall provide thirty (30) days' advance written notice to Licensee of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the Licensee address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Licensor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Licensor has an occurrence policy.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above. Licensor has an occurrence policy.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Licensee receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Licensee may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Licensor shall furnish to Licensee certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Licensee, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by Licensee shall not relieve or decrease the liability of Licensor hereunder.

**21. Liability of Licensee.** LICENSEE'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 7 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL LICENSEE BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **22. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or fax, and shall be addressed as follows:

To Licensee:     **(insert department's contact Name)**  
                          **(insert address, telephone, e-mail, fax)**

To Licensor:     **(insert Licensor's contact Name)**  
                          **(insert address, telephone, e-mail, fax)**

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

## **23. Termination and Termination for Convenience**

a. In the event Licensor fails to perform any of its obligations under this Agreement and such default continues for a period of ten days after written notice thereof from Licensee to Licensor, in addition to any other remedies available to Licensee, this Agreement may be terminated and all of Licensor's rights hereunder ended. Termination will be effective after ten days' written notice to Licensor, unless a different time period is set forth in the notice of termination. No new work will be undertaken, and no new deliveries will be made, after the date of receipt of any notice of termination, or five days after the date of the notice, whichever is earlier. In the event of such termination, Licensor shall refund to the Licensee a prorated amount of compensation.

b. In the event that the Licensee fails to perform any of its obligations under this Agreement and fails to remedy such breach within 30 days after receipt of written notice by Licensor of the breach, Licensor shall have the right to terminate this Agreement. In the event of such termination, Licensor shall refund to the Licensee a prorated amount of compensation.

c. In addition to its rights as set forth in Subsection A, Licensee shall have the option, in its sole discretion, to terminate this Agreement at any time during the term hereof, for convenience and without cause. Licensee shall exercise this option by giving Licensor written notice of termination. The notice shall specify the date on which termination shall become effective.

d. This Section 23 and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

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| 14. Warranties: Right to Grant License                      | 30. Use of City Opinion  |
| 15. Hold Harmless and Indemnification                       | 31. Contract Interpretation                                      |
| 16. Intellectual Property Hold Harmless and Indemnification | 33. Protection of Private Information                            |
| 18. Submitting False Claims; Monetary Penalties             | 38. Non-Waiver of Rights   |
| 19. Taxes   | 39. Modification of Agreement                                    |
| 20. Insurance   | 40. Agreement Made in California; Venue                          |
| 21. Liability of Licensee                                   | 41. Construction   |
| 24. Proprietary or Confidential Information of Licensee     | 42. Scope of Agreement; Entire Agreement; Provisions Controlling |
|   | 43. Audit and Inspection of Records                              |

e. Subject to the immediately preceding subsection, upon termination of this Agreement prior to expiration of the term specified in Section 3, this Agreement shall terminate and be of no further force or effect. This subsection shall survive termination of this Agreement.

f. Upon receipt of notice by the Licensee that it is terminating this Agreement, whether for convenience or for cause, Licensor shall commence and perform, with diligence, all actions necessary on the part of Licensor to effect the termination of this Agreement on the date specified by the Licensee.

g. In the event of termination, Licenser will be entitled to payment for those services performed, or deliveries made, under this Agreement to the satisfaction of the Licensee, up to the date of termination. In no event shall Licensee be liable for costs incurred by Licenser or any of its subcontractors after the termination date specified by Licensee. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense.

h. Within 30 days after the termination date specified by the Licensee, Licenser shall refund to Licensee that portion of the amount of compensation paid by Licensee under this Agreement that corresponds to the period of time, if any, for which the Agreement was no longer in effect. For example, where the Licensee has terminated the Agreement after 6 months, Licenser shall refund to the Licensee one-half of the annual payment. If Licenser fails to pay this refund within 30 days of the specified termination date, Licenser shall, in addition, pay 10% interest.

**24. Proprietary or Confidential Information of Licensee.** Licenser understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Licenser may have access to private or confidential information which may be owned or controlled by Licensee and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Licensee. Licenser agrees that all information disclosed by Licensee to Licenser shall be held in confidence and used only in performance of the Agreement. Licenser shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **25. Nondiscrimination; Penalties**

a. Licenser Shall Not Discriminate. In the performance of this contract, Licenser agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any employee of Licensee working with, or applicant for employment with Licenser, in any of Licenser's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licenser.

b. Subcontracts. Licenser shall incorporate by reference in all subcontracts the provisions of §12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code and shall require all subcontractors to comply with such provisions. Licenser's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Licenser does not as of the date of this contract and will not during the term of this contract, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Licensee elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above,

between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

d. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Licensor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Licensor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Licensor and/or deducted from any payments due Licensor.

**26. Bankruptcy.** In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

**27. Drug-Free Workplace Policy.** Licensor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Licensee premises. Licensor agrees that any violation of this prohibition by Licensor, its employees, agents, or assigns will be deemed a material breach of this Agreement.

**28. Limitations on Contributions.** Through execution of this Agreement, Licensor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Licensee for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Licensor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Licensor's board of directors; Licensor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Licensor. Additionally, Licensor acknowledges that Licensor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensor

further agrees to provide to Licensee the names of each person, entity or committee described above.

**29. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Licensor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Licensor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Licensee's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Licensor violates the provisions of this section, the Licensee may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Licensor from bidding on or receiving any new contract from Licensee for a period of two (2) years.

**30. Use of City Opinion.** Licensor shall not quote, paraphrase, or otherwise refer to or use any opinion of Licensee, its officers or agents, regarding Licensor or Licensor's performance under this Agreement without prior written permission of the City and County of San Francisco's Purchasing Department.

**31. Contract Interpretation.** Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to the City and County of San Francisco's Purchasing Department, who shall decide the true meaning and intent of the contract.

**32. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney of the City and County of San Francisco. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Licensor, will be paid unless the provider received advance written approval from the City Attorney.

**33. Protection of Private Information.** Licensor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Licensor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Licensor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Licensor.

**34. Subcontracting.** Licensor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Licensee in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**35. Assignment.** The services to be performed by Licensor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Licensor unless first approved by Licensee by written instrument executed and approved in the same manner as this Agreement.

**36. Compliance with Americans with Disabilities Act.** Licensor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Licensor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Licensor, its employees, agents or assigns will constitute a material breach of this Agreement.

**37. Sunshine Ordinance.** In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between Licensee and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**38. Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**39. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**40. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**41. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**42. Scope of Agreement; Entire Agreement; Provisions Controlling.** The purpose of the Agreement is to define the legal rights and obligations of the parties with respect to the Licensed Materials. If a License Addendum or other form agreement of Licensor is attached to the Agreement, the parties agree that in the event of conflicting language, the provisions of this document shall take precedence. This section shall supersede any language in the Licensor's terms and conditions attempting to nullify the terms and conditions in this document or to resolve language conflicts in favor of the Licensor's terms and conditions. This "License Agreement for Online Content Provider," and attachments hereto, sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

**43. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its

work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**44. Compliance with Laws.** Licensor shall make its best efforts to keep itself fully informed of the Licensee's Charter, codes, ordinances and regulations of the Licensee and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

**45. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**45. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

LICENSEE

LICENSOR

Recommended by:

[company name]

City Vendor Number \_\_\_\_\_

\_\_\_\_\_  
[department head name]  
[department name]

I have read and understood paragraph 45, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Approved as to Form:

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
[insert name of deputy city attorney]  
Deputy City Attorney

\_\_\_\_\_  
Authorized Signature

Approved:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Jaci Fong  
Director, Office of Contract Administration

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Phone Number

**Appendix A**  
**Description of Licensed Materials**

**Appendix B**  
**Calculation of Charges**

