



# 35144

## SUBSCRIPTION LICENSE AND SERVICES AGREEMENT

AGREEMENT NUMBER: \_\_\_\_\_

THIS SUBSCRIPTION LICENSE AND SERVICES AGREEMENT (the "Agreement") is between **Infor Public Sector, Inc.** ("Infor") and **City of Long Beach** ("Licensee") as of the Effective Date. The parties agree as follows:

### 1. Definitions.

(a) "**Affiliate**" means any entity, directly or indirectly, controlling, controlled by, or under common control with, Infor.

(b) "**Authorized Users**" means: (i) Licensee's employees; and (ii) contractors authorized by Licensee to access the Subscription Software who, prior to obtaining access to the Subscription Software, have executed a non-disclosure agreement that protects Infor's Confidential Information to the same extent as this Agreement, in each case registered in the database with a unique UserID and a unique password.

(c) "**Confidential Information**" means non-public information that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Infor includes, without limitation, the Documentation and the Subscription Software, including any software code and all algorithms, methods, techniques, and processes revealed or utilized therein. Confidential Information of Licensee includes Licensee Data. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation known to Recipient; or (iv) is independently developed by the Recipient without use of Confidential Information.

(d) "**Customizations**" means any components deployed in the hosted environment for the Subscription Software other than the generally available Subscription Software or components that Licensee may deploy via the standard user interface or tools included in the generally available Subscription Software. Customizations may include, without limitation, code, databases or third party extensions that are not included in the generally available Subscription Software.

(e) "**Discloser**" means the party providing Confidential Information to the Recipient.

(f) "**Documentation**" means the then-current Infor-provided documentation relating to the features, functions, and use of the Subscription Software.

(g) "**Documented Defect**" means a material deviation between the then-current, general release version of the Subscription Software and its Documentation.

(h) "**Effective Date**" means the date identified on the signature page of this Agreement as the Effective Date.

(i) "**Initial Subscription Term**" means the initial subscription period set forth on the applicable Order Form.

(j) "**Intellectual Property Rights**" means any and all rights in patents, copyrights, trademarks and service marks.

(k) "**Licensee Data**" means information provided, entered or uploaded for use by or with the Subscription Software by the Licensee or its Authorized Users.

(l) "**License Restriction**" means any limitation on the use of the Subscription Software identified in an Order Form (e.g., number of Authorized Users, locations, connections).

(m) "**Order Form**" means each order form between the parties incorporating the terms of this Agreement which shall contain, without limitation, a list of the Subscription Software and associated quantity and License Restriction, a description of the Subscription Services, Subscription Fees, and payment terms.

(n) "**Personal Information**" means information provided to Infor by or at the direction of Licensee, or to which access was provided to Infor in the course of Infor's performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). Personal Information shall include any non-public personal information regarding any individual that is subject to applicable national, state, regional, and/or local laws and regulations governing the privacy, security, confidentiality and protection of non-public personal information.

(o) "**Recipient**" means the party receiving Confidential Information of the Discloser.

(p) "**Renewal Term**" means any renewal or extension of Licensee's license to use the Subscription Software following the expiration of the Initial Subscription Term.

(q) "**Residual Knowledge**" shall mean ideas, concepts, know-how or techniques related to the Discloser's technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

(r) "**Service Level Description**" means the Service Level Description document applicable to the Subscription Services and attached as an exhibit to an Order Form.

(s) "**Subscription Fees**" means the fees for the Subscription Services set forth on the applicable Order Form.

(t) **“Subscription Services”** means the Subscription Software-related application hosting services and Support (as defined in Section 3(b)) that Infor provides Licensee under this Agreement.

(u) **“Subscription Software”** means collectively or individually the computer software programs identified in the applicable Order Form for which Infor is providing the Subscription Services.

(v) **“Subscription Term”** means the Initial Subscription Term or any Renewal Term, as applicable.

(w) **“Third Party Licensor”** means a third party whose software products (**“Third Party Products”**) have been made available to Infor for distribution and licensing under the terms of its agreement with Infor (a **“Third Party Agreement”**).

(x) **“Updates”** means generally available updates, enhancements or modifications to the then-current, general release version of the Subscription Software that are not separately priced or licensed as new products.

(y) **“UserID”** means a unique user identification credential used in combination with a unique password to access the Subscription Services.

2. **License.** Subject to the terms and conditions of this Agreement and the applicable Order Form, Infor hereby grants to Licensee a non-exclusive, non-transferable, limited license (without the right to sublease or sublicense) to access and use the Subscription Software and the Subscription Services, during the Subscription Term, in an operating environment hosted by Infor, for Licensee's own internal use. Any rights not expressly granted in this Agreement are expressly reserved.

(a) **Documentation.** Licensee may make a reasonable number of copies of the Documentation for the Subscription Software for its internal use in accordance with the terms of this Agreement.

(b) **License Restriction.** Licensee's use of the Subscription Software and Subscription Services is subject to any License Restriction specified in the applicable Order Form.

(c) **Additional Restrictions on Use of the Subscription Software and Subscription Services.** In no event shall Licensee access the Subscription Software on any environment outside the hosted environment selected by Infor as part of the Subscription Services. In no event shall Licensee or its Authorized Users possess or control the Subscription Software or any related software code. Licensee is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Subscription Software. Except as expressly provided by this Agreement, Licensee is prohibited from using the Subscription Software to provide service bureau services to third parties. Licensee will not allow the Subscription Software to be used by, or disclose all or any part of the Subscription Software to, any person except Authorized Users. Licensee acknowledges and agrees that U.S. export control laws and other applicable export and import laws govern its use of the Subscription Software and Licensee will neither export or re-export, directly or indirectly, the Subscription Software, nor any direct product thereof in violation of such laws, or use the Subscription Software for any purpose prohibited by such laws.

(d) **Intellectual Property Rights Notices.** Licensee is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in the Subscription Software or that Infor otherwise provides with the Subscription Services. Licensee must

reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Licensee makes of the Documentation.

(e) **Ownership.** Use of the Subscription Software and Subscription Services does not grant any ownership rights in or to the Subscription Software, the Subscription Services, or the Documentation. Licensee Data shall be the sole property of Licensee; however, Infor may aggregate anonymous statistical data regarding use and functioning of its system by its various licensees, and all such data (none of which shall be considered Licensee Data), will be the sole property of Infor.

### 3. **Subscription Services.**

(a) **Hosted Environment.** Infor will provide the application hosting environment, including the hardware, equipment, and systems software configuration on which Infor supports use of the Subscription Software and Subscription Services, on servers located at a facility selected by Infor.

(b) **Support.** Infor shall (a) provide Licensee with access (via the internet, telephone or other means established by Infor) to Infor's support helpline, (b) install, when and if generally available, Updates; and (c) use reasonable efforts to correct or circumvent any material deviation between the then-current, general release version of the Subscription Software and its Documentation (the foregoing referred to collectively as "Support"). Support is included in the Subscription Fee.

(c) **User Accounts.** Licensee is responsible for maintaining its own Authorized User UserIDs and passwords which can be managed through the Subscription Software interface. Licensee is responsible for maintaining the confidentiality of Licensee's UserIDs and passwords and shall cause its Authorized Users to maintain the confidentiality of their UserIDs and Passwords. Licensee is responsible for all uses of and activities undertaken with UserIDs registered on Licensee's account. Licensee agrees to immediately notify Infor of any unauthorized use of Licensee's UserIDs of which Licensee becomes aware.

(d) **Connectivity.** Infor will be responsible for maintaining connectivity from its network to the Internet which is capable of servicing the relevant Internet traffic to and from the hosted environment. Licensee is responsible for providing connectivity to the Internet for itself and its Authorized Users. Licensee shall also be responsible for ensuring that latency and available bandwidth from the user's desktop to Infor's hosted routers is adequate to meet Licensee's desired level of performance. If Licensee requires a VPN or private network connection to the Subscription Services, Licensee is responsible for all costs associated with any specialized network connectivity required by Licensee.

(e) **Restrictions.** Infor shall have no obligation to correct a problem caused by Licensee's negligence, Licensee's equipment malfunction or other causes beyond the control of Infor.

(f) **Customizations.** Customizations are not permitted absent Infor's prior written consent. If permitted, Customizations may only be created and deployed by Infor, and shall be documented in a separate agreement between Infor and Licensee. Support or other services for Customizations are not available under this Agreement or included as part of the Subscription Fees and may only be purchased pursuant to a separate agreement between Infor and Licensee.

#### **4. Payment and Taxes.**

(a) **Payment.** Licensee shall pay Infor the Subscription Fees set forth on the Order Form. Subscription Fees are payable in advance and Infor will invoice Licensee for Subscription Fees prior to the commencement of the portion of the Subscription Term to which such fees apply. After the Initial Subscription Term, the Subscription Fees shall be subject to annual adjustment. Except as otherwise set forth in this Agreement, Subscription Fees are non-refundable. Licensee will pay each Infor invoice in accordance with the payment terms set forth on the Order Form. Late payments are subject to a late charge equal to the lesser of: (i) one and one-half percent (1½%) per month; and (ii) the highest rate permitted by applicable law. Notwithstanding anything to the contrary in this Agreement, Infor reserves the right to suspend access to the Subscription Services in the event of any past due Subscription Fees.

(b) **Taxes.** Licensee is responsible for paying all taxes relating to this Agreement (except for taxes based on Infor's net income or capital stock). Applicable tax amounts (if any) are not included in the Subscription Fees set forth on any Order Form. Infor will invoice Licensee for applicable tax amounts and such invoices are payable in accordance with Section 4(a) and the Order Form.

#### **5. Limited Warranties, Disclaimer of Warranties, and Remedies.**

(a) **Right to Grant License.** Infor warrants that that it owns all right, title and interest in and to the Subscription Software or has obtained rights in such Subscription Software sufficient to grant the licenses granted to Licensee under this Agreement. Licensee's exclusive remedy, and Infor's exclusive obligation, for a breach of this warranty is set forth in Section 7 (Indemnity).

(b) **Limited Subscription Software Warranty by Infor and Remedy For Breach.** Infor warrants that the Subscription Software licensed to Licensee will operate without a Documented Defect for a period of ninety (90) days from the applicable Subscription Service Ready Date or Order Form Date defined in the applicable Order Form and as applicable to such Order Form. Infor's sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Subscription Software giving rise to the breach of warranty. If Infor is unable to repair or replace such Subscription Software within a reasonable period of time, then, subject to the limitations set forth in Section 14 of this Agreement, Licensee may pursue its remedies at law to recover direct damages resulting from the breach of this warranty. The remedies in this Section 5(b) are exclusive and in lieu of all other remedies, and represent Infor's sole obligations, for a breach of the foregoing warranty. Licensee must provide notice to Infor of any warranty claim within the warranty period. For clarity, Licensee's entitlement to Support (as defined in Section 3(b)) in connection with any Documented Defect shall continue throughout the Subscription Term.

(c) **Malicious Code.** Infor represents that it has used commercially reasonable best efforts utilizing generally accepted industry tools and practices to provide Subscription Software that does not contain any "time bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys," or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the Subscription Services ("Malicious Code"). As Licensee's sole remedy for breach of this representation, Infor shall take action immediately to investigate, identify and remove such Malicious Code from the Subscription Software.

(d) **Limited Services Warranty and Remedy For Breach.** Infor warrants to Licensee that, Infor will render the Subscription Services with commercially reasonable care and skill. Infor further warrants that the hosted environment will be available at all times throughout

the Subscription Term, subject to the exceptions and allowances described in the Availability section of the applicable Service Level Description. The level of unavailability shall not exceed one half of one percent (0.5%) per month, excluding Scheduled Maintenance as described in the applicable Service Level Description (the "Down Time Warranty"). In the event of a breach of the foregoing warranty Infor shall apply service level credits based on the actual availability measure for the applicable period as follows:

<b><u>Availability</u></b>	<b><u>Service Level Credit</u></b>
99.500% or greater	No Service Level Credit
99.499% - 99.000%	5% of the monthly prorated subscription fee
98.999% - 98.500%	15% of the monthly prorated subscription fee
98.499% - 95.000%	25% of the monthly prorated subscription fee
Below 95.000%	35% of the monthly prorated subscription fee

Service level credits for Subscription Fees paid on an annual basis shall be based on a monthly equivalent fee. For example, a 5% service level credit on an annual subscription fee shall be 5% of 1/12 of the annual fee. Service level credits shall be applied to Licensee's next invoice or, if Licensee has paid the final invoice under this Agreement, service level credits shall be paid to Licensee within thirty (30) calendar days following the determination that the credit is due. The service level credit is the exclusive remedy and is in lieu of all other remedies for breach of the Down Time Warranty.

(e) **Disclaimer of Warranties.** The limited warranties in this Section 5 are made to Licensee exclusively and are in lieu of all other warranties. **INFOR MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SUBSCRIPTION SOFTWARE AND SUBSCRIPTION SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR ANY ORDER FORM, IN WHOLE OR IN PART. INFOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. INFOR EXPRESSLY DOES NOT WARRANT THAT THE SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE, OPERATE WITHOUT INTERRUPTION OR MEET LICENSEE'S REQUIREMENTS.**

(f) **Abrogation of Limited Warranty.** Infor will have no obligation under this Section 5 to the extent that any alleged breach of warranty is caused by any modification of the Subscription Software not performed by or on behalf of Infor. To the extent that an alleged breach of warranty concerns a Third Party Product that is subject to a more limited warranty under a Third Party Agreement than specified in Section 5 above, Infor's obligations hereunder will be further limited accordingly.

**(g) FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 14 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER LICENSEE HAS**

**ACCEPTED ANY SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICE UNDER THIS AGREEMENT.(g)**

**HIGH RISK ACTIVITIES. THE SUBSCRIPTION SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SUBSCRIPTION SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, INFOR DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. LICENSEE AGREES THAT INFOR SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE SUBSCRIPTION SOFTWARE IN SUCH APPLICATIONS.**

**6. Confidential Information.**

(a) Confidentiality. The Confidential Information disclosed under this Agreement may be used, disclosed or reproduced only to the extent necessary to further and fulfill the purposes of this Agreement. Except as otherwise permitted under this Agreement, the Recipient will not knowingly disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item; provided, however, that Licensee's obligations to maintain the Subscription Software and Documentation as confidential will survive in perpetuity. Each of Licensee and Infor shall be responsible for the breach of the confidentiality terms contained in this Section 6 by any of its directors, officers, employees, Authorized Users, agents, accountants and advisors. Notwithstanding the foregoing, this Section is not intended to prevent (a) a Recipient from using Residual Knowledge, subject to any Intellectual Property Rights of the Discloser, or (b) Infor from using aggregated data regarding the use of the Subscription Services to provide reports or analytics to Licensee or to improve the performance of Infor's products, provided such data does not contain any Personal Information regarding Licensee, its employees, customers or Authorized Users. If the Recipient should receive any legal request or process in any form seeking disclosure of Discloser's Confidential Information, or if the Recipient should be advised by counsel of any obligation to disclose such Confidential Information, the Recipient shall (if allowed by law) provide the Discloser with prompt notice of such request or advice so that the Discloser may seek a protective order or pursue other appropriate assurance of the confidential treatment of the Confidential Information. Regardless of whether or not a protective order or other assurance is obtained, the Recipient shall furnish only that portion of the Discloser's Confidential Information which is legally required to be furnished and to use reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished.

(b) Security Policies and Safeguards. Infor shall establish and maintain administrative, technical, and physical safeguards designed

to protect against the destruction, loss, unauthorized access or alteration of Licensee Data and Personal Information in the possession or under the control of Infor or to which Infor has access, which are: (i) no less rigorous than those maintained by Infor for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) required by applicable laws. The security procedures and safeguards implemented and maintained by Infor pursuant to this Section 6(b) shall include, without limitation:

- (i) User identification and access controls designed to limit access to Licensee's Data to authorized users;
- (ii) the use of appropriate procedures and technical controls regulating data entering Infor's network from any external source;
- (iii) the use of encryption techniques when Licensee's Data is transmitted or transferred into or out of the hosted environment;
- (iv) physical security measures, including without limitation securing Licensee's Data within a secure facility where only authorized personnel and agents will have physical access to Licensee Data;
- (v) operational measures, including without limitation IT Service Management (ITSM) processes designed to ensure the correct and secure operations of information processing activities;
- (v) periodic employee training regarding the security programs referenced in this Section; and
- (vi) periodic testing of the systems and procedures outlined in this Section.

(c) Review of Controls. Once in each 12 month period during the Subscription Term, Infor shall, at its cost and expense, engage a duly qualified independent auditor to conduct a review of the design and operating effectiveness of Infor's defined control objectives and control activities in connection with the Subscription Services. Infor shall cause such auditor to prepare a report in accordance with the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements No. 16 (SSAE 16) or an equivalent standard, which may include ISAE 3402 (the "Audit Report"). Licensee shall have the right to request and receive a copy of the Audit Report and Licensee may share a copy of such Audit Report with its auditors and regulators, provided that, such Audit Report shall be Infor's Confidential Information (as defined in this Agreement).

(d) Security Incident Response. In the event that Infor becomes aware that the security of any Licensee Data or Personal Information has been compromised, or that such Licensee Data or Personal Information has been or is reasonably expected to be subject to a use or disclosure not authorized by this Agreement (an "Information Security Incident"), Infor shall: (i) promptly (and in any event within 24 hours of becoming aware of such Information Security Incident), notify Licensee, in writing, of the occurrence of such Information Security Incident; (ii) investigate such Information Security Incident and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to Licensee; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within Infor's control; and (v) cooperate with Licensee's reasonable investigation or Licensee's efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident.

7. **Indemnity by Infor.** Infor will defend, indemnify and hold Licensee harmless from and against any loss, cost and expense to the extent arising from a third party claim against Licensee that the Subscription Software infringes any Intellectual Property Rights of others. Infor's obligations under this indemnification are expressly conditioned on the following: (i) Licensee must promptly notify Infor of any such claim; (ii) Licensee must, in writing, grant Infor sole control of the defense of any such claim and of all negotiations for its settlement or compromise so long as such settlement or compromise does not result in payment of money by Licensee or an admission of guilt by Licensee (if Licensee chooses to represent its own interests in any such action, Licensee may do so at its own expense, but such representation must not prejudice Infor's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Licensee must reasonably cooperate with Infor to facilitate the settlement or defense of the claim. Infor will not have any liability hereunder to the extent the claim arises from (a) any modification of the Subscription Software by, on behalf of, or at the request of Licensee; or (b) the use or combination of the Subscription Software with any computer, computer platform, operating system and/or data base management system other than provided by Infor or supported by generally available release of software as stated in the Documentation.. If any Subscription Software is, or in Infor's opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, then Infor, at its sole option and expense, will either: (A) obtain for Licensee the right to continue using the Subscription Software under the terms of this Agreement; (B) replace the Subscription Software with products that are substantially equivalent in function, or modify the Subscription Software so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Licensee the un-used portion of the Subscription Services fee, if any, paid to Infor for the Subscription Software giving rise to the infringement claim, and discontinue Licensee's use of such Subscription Software. **THE FOREGOING SETS FORTH INFOR'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

#### 8. **Term and Termination.**

(a) **Term.** With respect to the Subscription Software, the Initial Subscription Term shall be as set forth on the applicable Order Form. After the Initial Subscription Term, the Subscription Term shall automatically renew for successive one-year Renewal Terms, unless either party provides written notice of non-renewal to the other party at least ninety (90) days prior to expiration of the Initial Subscription Term or then current Renewal Term, as the case may be. Except as set forth in Section 8(b), the Subscription Term cannot be terminated prior to its expiration date.

(b) **Right of Termination.** If either party breaches any material obligation in this Agreement or an Order Form (including, without limitation, any obligation to pay Subscription Fees), and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other party may terminate this Agreement (including all Order Forms hereunder). Notwithstanding the foregoing, to the extent such material breach cannot be remedied through efforts of the breaching party, the other party has the right to terminate this Agreement (including all Order Forms hereunder) on less than thirty days' written notice.

(c) **Effect of Termination.** Upon termination of this Agreement by either party, Licensee's license to access and use the Subscription Software and Subscription Services shall immediately terminate as of the effective date of such termination. Termination of this Agreement will not release either party from making payments which

may be owing to the other party under the terms of this Agreement through the effective date of such termination. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement, unless otherwise expressly stated herein.

(d) **Return of Licensee Data.** Upon termination or expiration of this Agreement, Infor shall promptly make all Licensee Data available to Licensee as a native database export provided through Infor's FTP server. In the event that Licensee requires the return of Licensee Data in an alternate format or requires any other termination assistance services, Infor and Licensee shall mutually agree upon the scope of such termination assistance services and the fees and expenses payable for such termination assistance services.

(e) **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, limitation of liability, and such other terms which by their nature survive termination, will survive termination or expiration of this Agreement.

9. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by registered or certified mail, return receipt requested; transmitted by facsimile confirmed by first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown on the signature page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Licensee must promptly send copies of any notice of material breach and/or termination of the Agreement to Infor, Attention: General Counsel, 40 General Warren Blvd Suite # 110, Malvern, PA 19355, USA, FAX number 678-319-8949, or to such other place as Infor may subsequently designate for its receipt of notices.

10. **Force Majeure.** Except with respect to the payment of fees hereunder, neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including, without limitation, Acts of God, war, terrorist acts, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing.

11. **Assignment.** Licensee may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Infor, whether by operation of law or otherwise, including in connection with a change in control, merger, acquisition, consolidation, asset sale or other reorganization, and any attempt at such assignment or transfer will be void.

12. **No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

13. **Choice of Law; Severability.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without application of any conflict of laws provisions thereof, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of New York, without application of any conflict of laws provisions thereof. This Agreement is originally written in the English language and the English language version shall control over any translations. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect. The United

Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement.

**14. LIMITATIONS OF LIABILITY.**

**(a) LIMITED LIABILITY OF INFOR. EXCEPT WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND THIRD PARTY LICENSORS IN CONNECTION WITH OR RELATED TO THE SUBSCRIPTION SOFTWARE, THE SUBSCRIPTION SERVICES, OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) WILL NOT EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE TO INFOR HEREUNDER FOR THE TWELVE-MONTH PERIOD IN WHICH SUCH LIABILITY FIRST AROSE.**

**(b) EXCLUSION OF DAMAGES. IN NO EVENT WILL INFOR, ITS AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER INFOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.**

**15. Audit Rights.** Infor (including any third party auditor retained by Infor) may audit the records and systems of Licensee to ensure compliance with the terms of this Agreement and each applicable Order Form. Infor will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during regular business hours and will not interfere

unreasonably with Licensee's business activities. Infor may audit Licensee no more than once in any twelve (12) month period. If an audit reveals that Licensee is using the Subscription Software or Subscription Services beyond the scope of the license granted herein (for example, in excess of the License Restriction), then, in addition to any other remedies available to Infor, Licensee will promptly pay Infor the underpaid Subscription Fees associated therewith based on Infor's then-current list rates, as well as any applicable late charges.

**16. Compliance with Laws.** Licensee will comply with all laws, rules and regulations applicable to the use of the Subscription Software and the Subscription Services including, without limitation, by not submitting any Licensee Data that is illegal, defamatory, or that infringes any third party proprietary rights.

**17. Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document, which may be issued by Licensee in connection with this Agreement, does not modify, supplement or add terms to this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement. This Agreement and any signed agreement or instrument entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of digital imaging, electronic mail or a facsimile machine, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. This Agreement and all Order Forms may be signed in counterparts.

[Signature Page Follows]

THE PARTIES have executed this Subscription License and Services Agreement through the signatures of their respective authorized representatives.

Effective Date: \_\_\_\_\_

**Infor Public Sector, Inc.**

Signature: Brad Steiner  
Printed Name: Brad Steiner  
Title: SVP & Deputy General Counsel  
Address: 641 Avenue of the Americas  
Address: New York, NY 10011  
Signature Date: 12/27/2018

**Licensee: City of Long Beach**

Signature: \_\_\_\_\_  
Printed Name: Tom Modica  
Title: Assistant City Manager  
Address: 333 W. Ocean Blvd, 12<sup>th</sup> Floor  
Address: Long Beach, CA 90802  
Signature Date: 1/14/19

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER**

APPROVED AS TO FORM

1/7, 20 19  
CHARLES PARKIN, City Attorney

By Linda T. Vu  
LINDA T. VU  
DEPUTY CITY ATTORNEY



## SaaS Order Form

This Order Form is subject to the terms of the Subscription License and Services Agreement between Infor Public Sector, Inc. ("Infor") and City of Long Beach ("Licensee") with an effective date of \_\_\_\_\_ (the "Agreement"). All terms of the Agreement are incorporated herein by reference. In the event of a conflict, the terms of this Order Form control over the terms of the Agreement.

Capitalized terms not defined in this Order Form are defined in the Agreement. In the event the capitalized terms in this Order Form differ from the terminology used in the Agreement, references herein to: "Subscription Software" and "Component Systems" shall have the same meaning, refer to the computer software programs identified this Order Form and may be referred to in the Agreement as Component Systems, Products, Software Products, Subscription Software, Software, Standard Software, Programs or Licensed Programs; "Support" may be referred to in the Agreement as Support, Maintenance and Support, Annual Support, Support Services, On-Going Support or One Point Support; and "License Restriction" means any limitation on the use of the Subscription Software and may be referred to in the Agreement as License Restriction or User Restriction.

### I. Subscription Software

	Part # (if applicable)	Subscription Software	License Restriction*		Support Level**
			Quantity	Type	
1	RFG-S-CIVICS-S	Infor Rhythm for Civics - SaaS	30,000	AASTX	CXT

For the purpose of the definitions below, Component System and Subscription Software may be used interchangeably.

\* If specified in the User Restriction field:

**"AASTX" = Annual Active Searchable Transactions** - Quantity represents the number of entries within a single year which are active and searchable by the Component System, including but not limited to permits, service requests, business licenses and utility billing accounts, regardless of whether such entries are entered manually or electronically via the Component System or any other means.

#### **\*\*Support Level for Subscription Software:**

CXT = Essential Support– During the Subscription Term, Licensee is eligible to receive the standard support that Infor makes generally available to its subscription customers. No subscription options for support are included unless otherwise specified herein. Additional information regarding Subscription Services support may be found at:  
<http://www.infor.com/cloud/subscription/>

### II. Subscription Term and Subscription Fees

**Annual Subscription Fee: \$30,000.00**

**Initial Subscription Term:** Order Form Date through 3 years from Order Form Date.

<b>Fee for Initial Subscription Term:</b>	<b>\$ 90,000.00</b>
<b>Total Amount Due (before applicable taxes):</b>	<b>\$ 90,000.00</b>

Unless otherwise specified all amounts are in United States Dollar

**Currency: USD**



### III. **Payment Terms:**

#### **Annual Payment Terms:**

Licensee shall pay the Annual Subscription Fee, in advance, as invoiced by Infor. The first Annual Subscription Fee, plus applicable taxes, will be invoiced promptly upon the Order Form Date. All other Annual Subscription Fees will be invoiced such that they are due prior to the commencement of the portion of the Subscription Term to which the Annual Subscription Fee applies. Licensee shall pay all invoices within 15 days of the date of the invoice.

<b>Licensee Account ID:</b>	372433
<b>Infor GL ID:</b>	US06A
<b>Account Executive Name:</b>	Stephen Bury

<b>Primary-use Address:</b>	<b>Invoice Address:</b>
City of Long Beach 333 W Ocean Blvd 12th Floor Long Beach, CA 90802 USA	City of Long Beach 333 W Ocean Blvd 12th Floor Long Beach, CA 90802 USA
Contact Name: Vanessa Llanes	Contact Name: Vanessa Llanes
Contact Title: Business Info Systems Officer	Contact Title: Business Info Systems Officer
Contact Phone: 562-570-5090	Contact Phone: 562-570-5090
Contact email: Vanessa.llanes@longbeach.gov	Contact email: Vanessa.llanes@longbeach.gov

### IV. **Additional Terms**

Exhibit 1 –Service Level Description is attached to and made a part of this Order Form.

In consideration for the pricing and terms under this order form, Infor may make reference to Licensee as a customer in press releases and written and verbal communications. Licensee agrees to act as a reference for Infor, including participating in reference calls and other reference activities as may be reasonably requested by Infor.


Licensee's purchase of the licenses specified herein is not contingent or dependent upon the provision of any consulting services Licensee may choose to purchase from Infor contemporaneously with this Order Form or in the future.


#### **Infor Document Management:**


Since Licensee has the ability to gain access to certain Infor Document Management (DMG) Source Code, made available by Infor for the limited purpose of allowing such DMG Component System(s) to run on a desktop/laptop computer or other supported devices, Licensee acknowledges and agrees on following: 1) The Licensee is entitled to use this particular DMG Source Code for the sole purpose of allowing it to use the applicable Component System; 2) Infor does not entitle Licensee to modify such Source Code; 3) Infor neither assumes nor accepts responsibility or liability regarding any such modifications and will not provide Support for any Component System issues related to such modifications; 4) Any and all use of the DMG Source Code for any purpose other than for the limited purpose as specified above shall be deemed to be a breach of the Agreement.

Effective date of this Order Form: \_\_\_\_\_ (the "Order Form Date"), to be completed by Infor upon countersignature.

THE PARTIES have executed this Order Form through the signatures of their respective authorized representatives.

**Infor Public Sector, Inc.**  
for: \_\_\_\_\_  
  
\_\_\_\_\_  
Signature  
Brad Steiner  
\_\_\_\_\_  
Typed or Printed Name  
SVP & Deputy  
General Counsel  
\_\_\_\_\_  
Job Title  
12/27/2018  
\_\_\_\_\_  
Date

**City of Long Beach**  
for: \_\_\_\_\_  
(Licensee)  
  
\_\_\_\_\_  
Signature  
Tom Modica  
\_\_\_\_\_  
Typed or Printed Name  
Assistant City Manager  
1/14/19  
\_\_\_\_\_  
Job Title  
Date  
EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

APPROVED AS TO FORM  
1/3, 2019  
\_\_\_\_\_  
CHARLES PARKIN, City Attorney  
By   
\_\_\_\_\_  
LINDA T. VU  
DEPUTY CITY ATTORNEY

## Exhibit 1 to SaaS Order Form

### Service Level Description

**Infrastructure** - The services are supported by commercially reasonable redundant infrastructure including

- Power infrastructure that includes redundant sources (multiple power feeds, generators, battery backups), multiple power distribution systems, and redundant power supplies;
- Environmental controls that include highly available precision HVAC systems, humidity controls, and water detection systems;
- Network infrastructure that includes multiple Internet Service Providers, redundant edge routers, firewalls, and switches;
- Hardware and software redundancy in support of virtualized and physical servers; and
- Storage solutions that provide redundant back end data storage.

Infor maintains a disaster recovery site where Licensee's data is replicated on a regular basis.

**Technical Change Management** – Infor maintains change management system to ensure review and controlled implementation of changes that Infor may make from time to time in the support of the services. Changes require both a risk analysis and a peer review before being implemented in Infor's infrastructure.

**Cloud Storage** - Infor Subscription Software solutions include two (2) terabytes of storage at no additional charge. This storage limitation is for the Licensee's production environment only and applies to each Infor CloudSuite or Subscription Software product line, regardless of whether they are subscribed for on a single Order Form or across multiple Order Forms.

**Security & Privacy** – Infor takes great care to protect non-public information provided to us by our customers. Infor may have access to non-public information from multiple sources that include:

- Directly from use of one of Infor's hosted applications.
- Directly from a customer's designated service representative or indirectly via batch data transfers.
- In the course of transactional activities as information is updated or processed by an Infor hosted application, or through data maintenance activities.
- Other sources as defined by one of our solutions.

Infor has implemented a defense-in-depth strategy to protect non-public information. This strategy is based upon best-practices designed to comply with applicable laws and regulations and is based upon widely accepted industry standards. Our security management system is based on the following:

- **Security Policies:** We require that all employees be responsible for the security of non-public information and follow the practices defined within the Information Security Management System.
- **Information Security Organization:** Infor's management is committed to security and has established an organization responsible for the security of non-public information.
- **Asset Management:** All assets are strictly controlled and all information is classified in order to determine the appropriate controls required for access and handling.
- **Human Resources Security Practices:** In the US, Infor conducts a comprehensive background check and screening at the time each employee is hired and requires that employees maintain familiarity and compliance with security responsibilities. When employees leave Infor, a formal process is established to remove their physical and virtual access to the Infor infrastructure.
- **Physical and Environmental Security:** Infor places critical components in physically controlled spaces with best-practices in place to secure infrastructure. Physical and environmental security measures include card and/or biometric access controls, and limited access to secure locations based on job function.
- **Access Control:** All access to systems, networks, and applications is controlled down to the user and resource level with role-based privilege techniques. This access is reviewed on a periodic basis to ensure that a change of personnel or a change of role has not modified the access needs of the individual.

- **Communication and Operations Management:** Infor has implemented strong operational procedures to protect information. Our controls surrounding system planning, protection from malicious code, backup processes, network security, media handling and exchange of information are constantly being analyzed and monitored to insure they provide reasonable protection for your data. Third party service providers with access to confidential information are required to adhere to security and privacy requirements that are consistent with and at least as restrictive as Infor's own policies and procedures regarding the protection of confidential information.
- **System Development:** Security requirements of all applications that handle confidential information are defined early in the development stage. Appropriate data protection techniques are designed into the application while changes to developed software must go through a mature change management process.
- **Incident Management:** In the unlikely event of an actual or reasonably suspected security incident, our teams immediately begin work to identify the scope of impact, mitigate any exposure, determine the root cause of the incident and take appropriate corrective action.
- **Compliance:** We are constantly analyzing the requirements of legal, regulatory, and contractual obligations to ensure we are abiding by the requirements that apply to the handling of your data.

**Scheduled Maintenance** – The services shall be subject to a regularly scheduled weekly maintenance window. Infor makes commercially reasonable efforts to establish maintenance windows during times that minimize impact to Licensee's users. While most of Infor's maintenance can be completed during regularly scheduled maintenance windows, from time to time maintenance must be performed outside of the scheduled maintenance windows to maintain the integrity and security of the services. In such cases, Infor will provide Licensee's primary point of contact as much advance notice of the planned maintenance as is technically feasible. The regularly scheduled weekly maintenance windows and any period of unavailability due to maintenance for which Licensee is given at least 24 hours advance notice is considered "Scheduled Maintenance".

**Availability** – Infor's goal is to provide access to the services at Infor's Internet gateway(s) twenty-four hours per day, seven days a week, except during Scheduled Maintenance. Infor's service level objective is 99.5% Availability measured on a monthly basis.

Availability for the Subscription Services is measured monthly as a percentage of Scheduled Available Minutes.

- "Scheduled Available Minutes" are the total minutes in a month less the number of Scheduled Maintenance minutes in the applicable month.
- "Available Minutes" is the number of Scheduled Available Minutes in a month less the aggregate number of minutes the Subscription Services were unavailable outside of Scheduled Maintenance.
- "Availability" is a percentage calculated as the Available Minutes in a month divided by the Scheduled Available Minutes in the month.

For example, in a 30 day month with 4 weekly Scheduled Maintenance windows of 8 hours, there are 41,280 Scheduled Available Minutes ((60 min. x 24 hrs. x 30 days)-(60 min. x 8 hrs. x 4 weeks) = 41,280). If the Subscription Services experienced an outage of two hours outside of Schedule Maintenance, there were 41,160 Available Minutes in the month (41,280 Scheduled Available Minutes – 120 minutes of unavailability). The resulting Availability percentage is 41,160 / 41,280 = 99.7%.

The following shall not be considered periods of unavailability for purposes of the Availability calculation:

- Outages due to factors outside of Infor's reasonable control (for example, a network or device failure at Licensee's site or between Licensee and Infor's data centers);
- Delays in email or webmail transmission to or from the hosted application;
- Connectivity issues outside of Infor's direct control (e.g. DNS issues);
- Force Majeure events;
- Outages attributable to the acts or omissions of Licensee or Licensee's employees, agents, contractors, or vendors, or anyone gaining access to the services means of UserIDs or equipment controlled by Licensee;
- Periods of Down Time at Licensee's request;
- Outages that result from Licensee's equipment, software, or other technology and/or third party equipment, software or other technology (other than those which are under Infor's direct control); and
- Performance degradation due to Licensee's use of the services in excess of the scope of Licensee's license, usage restrictions, or product limitations outlined in the applicable Agreement.