

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
ETHOSOFT
FOR
LABORATORY INFORMATION MANAGEMENT SYSTEM (LIMS)**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro, a California charter city, ("City") and Ethosoft, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of September 10, 2020 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on July 1, 2022, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Consultant's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Consultant must submit completed self-certification form and comply with the LWO if covered.
- 1.5 **Public Works Contractor Registration.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless

currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$54,305, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the

hours spent by each person, a brief description of the work, and each reimbursable expense;

- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and shall not exceed \$4,665. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, and computers for training as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

- 4.1.1 General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory

Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 (ONE MILLION DOLLARS) per accident. In the alternative, Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 (TWO MILLION DOLLARS) and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 (ONE MILLION DOLLARS) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 [Reserved]

4.4 **Cyber Liability Insurance**

4.4.1 General Requirements. Consultant, at its own cost and expense, shall maintain cyber liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 per occurrence / aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology services:

- Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- Data theft, damage, unauthorized disclosure, destructions, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential City information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems;
- Loss or denial of service;
- No cyber terrorism exclusion;

Such coverage must include technology/professional liability including breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs, including without limitation, notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management/public relations services.

4.4.2 Claims-Made Limitations. The following provisions shall apply if the cyber liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.4.4 Submittal Requirements. To comply with Subsection 4.4, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.5 All Policies Requirements.

4.5.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.5.2 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all

endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.5.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.5.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.5.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.5.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.6 Submittal of Proof of Insurance Coverage. All certificates of insurance and original endorsements effecting coverage required in this Section 4 must be electronically submitted through the City's online insurance document management program, PINS Advantage. Contractor shall comply with all requirements provided by City related to the PINS Advantage program.

4.7 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. **STATUS OF CONSULTANT.**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. **LEGAL REQUIREMENTS.**

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective

professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 90 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. The City, upon written notice to Consultant prior to the expiration of the current Agreement term, may renew the Agreement for additional terms. A renewal of this Agreement shall be in terms up to four years, and the annual cost of such renewed Agreement shall be no more than the First Year Cloud User cost of this Agreement plus five percent (5%).

Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator,

City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are

not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At City's sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant's economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by Hayes Morehouse ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

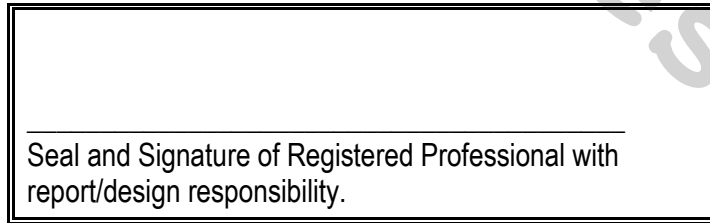
10.10 Notices. Any written notice to Consultant shall be sent to:
BILL MOSS
6050 Peachtree Parkway, Suite 240 #249
Norcross, GA 30092
bmoss@ethosoft.com

Any written notice to City shall be sent to:

Hayes Morehouse
Water Pollution Control Plant Administrative Analyst
3000 Davis Street
San Leandro, CA 94577
hmorehouse@sanleandro.org

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 94577

- 10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 Integration. This Agreement, including the scope of services, the compensation schedule, the indemnification provision, the provisions for public works contracts, and the software license agreement, all attached hereto and incorporated herein as Exhibits A, B, C, D, E and F, respectively, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	COVID-19 Compliance Requirements
<u>Exhibit E</u>	California Labor Code Section 1720 Information
<u>Exhibit F</u>	Ethosoft Cloud Services Agreement

In the event of any conflict between the terms and provisions of Exhibits A through E and this Agreement, the terms of this Agreement shall control.

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

Ethosoft, Inc.

Jeff Kay, City Manager

DocuSigned by:

Bill Moss

Bill Moss, President and CEO
Consultant's Signature

Attest:

Consultant's DIR Registration Number
(if applicable)

Leticia I. Miguel, City Clerk

Budget Approved:

Approved as to Fiscal Authority:

Susan Hsieh, Finance Director

593-51-002-5120
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7: Form 700 Required

Debbie Pollart, Public Works Director
Department Head's Signature

EXHIBIT A

SCOPE OF SERVICES

Introduction

This Scope of Services defines the scope of work to be accomplished by Ethosoft under the terms and conditions of the contract for the Laboratory Information Management System (LIMS) Project between the City of San Leandro Water Pollution Control Plant Laboratory (referred to herein as “the City”) and Ethosoft, Inc. The tasks to be performed by Ethosoft are defined (see Section B, Ethosoft Responsibilities) as are the activities to be performed by the City (see Section C, San Leandro Responsibilities). If major changes to this Scope of Services are identified, they will be processed in accordance with the plan described in Section D, "Project Change Control Plan". The analysis and implementation of changes may result in modifications to the Estimated Schedule, additional charges to the City, or other terms of this Scope of Services.

The Scope of Services includes the following subsections:

- A. Scope of Services
- B. Ethosoft Responsibilities and Project Plan
 - a. Deliverables
 - b. Completion Criteria
- C. San Leandro Responsibilities
- D. Project Change Control Plan
- E. Escalation Procedures
- F. Description of Cloud Services

A. Scope of Services

The scope of the project is to establish a fully functional Cloud X-LIMS system that will be implemented for the laboratory to provide a comprehensive solution that will meet the requirements of the City. This system will be used by the City’s laboratory technicians and managers to perform sample analysis, verification, track lab supplies and provide reporting.

Phased Approach

A detailed description of Ethosoft’s 7-phased implementation process is outlined below:

Phase I: Project Organization -- The first phase is to get the project organized. During this phase, the project scope is reviewed with the City’s project manager and there is a project kick off meeting to spell out roles, responsibilities, and lines of communication during the project. Weekly Status meetings are scheduled during this phase. A high-level schedule is prepared at the end of this phase.

Phase II: Project Requirements / Data Gathering -- Once the project organization is complete, Ethosoft conducts a project data gathering phase. Ethosoft's implementation specialist will spend three days on-site to gather information and to understand the customer's processes, workflows, customizations requirements, instrument integration, reports, and integration with any external software programs. The City should be prepared to have staff available that week to meet with the implementation specialist and answer any questions that are asked.

Phase III: Requirements Analysis – After gathering the data, Ethosoft will review and document the information gathered in phase II and devise the strategy to configure X-LIMS to meet the City's needs.

Phase IV: System Configuration – In this phase, Ethosoft will configure the data for the City to ease implementation. Ethosoft differs from other LIMS vendors in this respect by actually performing the initial configuration of data for the customer according to the data gathered in Phase II. Our philosophy is to provide the customer with a 95% out of the box ready solution after configuration where the customer will be trained on an X-LIMS system that contains their workflows, tests, limits, and sample locations.

In addition, the reports and data imports/exports and custom code constructs are configured for the system during this phase. The configuration will be reviewed by setting up a secure web site on Ethosoft's server that only the City can access remotely via the internet. Once the data is configured, Ethosoft conducts several interactive web sessions (schedule to be determined by the City's workload) with the system administrator(s) and lab section managers to review the configuration. This serves to make the City's employees part of the process and to give them experience with the system before any formal training takes place.

Phase V: Validation Test Planning – In this phase, based on the configured workflows and configured data, Ethosoft will work with the City so that they can draft validation test plans for review. It is the responsibility of the City to create the validation test plans. Once the plans are approved, the configured system is then ready to be installed so that testing may begin. Cut over and Go-live planning is done during this phase as well.

Phase VI: Installation and Training – Once the validation plan has been approved by the City, Ethosoft will install the configured X-LIMS product on the Cloud server. Once the installation is complete, Ethosoft comes onsite and the implementation specialist trains the administrators and end users on the system that has been configured for their use. The City will need to allocate space for the training sessions. We have found that such a situation facilitates training as the end users will be logging in samples with familiar tests, workflows, sample locations and schedules.

Phase VII: Validation Testing – The City will perform validation testing during this phase according to the scenarios defined in the validation test plan with the identified staff. Issues are reported to Ethosoft and will be tracked with a case number. Once the testing is complete and any outstanding issues are resolved, the City signs off on the validation testing and the system goes live.

Ethosoft implementation staff will require desks/workspace and an internet connection for all onsite work.

B. Ethosoft Responsibilities and Project Plan

The specific services to be provided by Ethosoft under this Scope of Services are described in this section. The project plan presented below is a preliminary plan. A final plan will be produced after the project kick off meeting and requirements analysis.

Phase I: Project Organization

Timing: Day 1

Description:

The purpose of this task is to finalize the project team members, facilitate a common understanding of the project objectives, roles and responsibilities, and verify the City's readiness to implement the LIMS system.

Ethosoft will conduct a project kick-off/high level planning session (on-site meeting), for up to two (2) hours, on a mutually agreed upon date, to:

- Identify core project team – the City and Ethosoft
- Project goals, objectives, roles and responsibilities, and project tasks to be completed
- Review Escalation Procedure
- Review Project Change Control Procedure
- The communication plan, processes and frequency of communication in the project

Deliverable:

Accepted Roles and Responsibilities definition document

Phase II: Project Requirements/Data Gathering

Timing: Day 2-4

Description:

Ethosoft will perform on-site reviews of the workflows within the laboratory sections. They will also review the requirements identified for the project and develop configuration worksheets to be used in the final software installation phase. The major subtasks are:

- Review process workflows for laboratory sections
- Review Workflow, Worklists, Templates, Bench worksheets, and reagents for the laboratory.
- Gather the instrument files for import and determine any required calculations on the data.
- Gather information concerning the IT infrastructure, including client machines and configurations, security policies, training and production server logistics, backup logistics.
- Review system requirements
- Develop configuration worksheets

Deliverables:

- Detailed Project schedule
- Draft Configuration worksheets

Phase III: Requirements Analysis

Timing: Day 6-36

Description:

The purpose of the analysis phase is to have Ethosoft review the information and devise a strategy to help configure X-LIMS to meet the City's needs. The information gathered will also be used to develop the necessary system configuration. Worksheets are filled out to determine the parameters tracked, limits, and units for tests and QCs. Sheets to be submitted to Ethosoft. The San Leandro LIMS administrator should plan on at least 5 days of work to fill out data for the implementation worksheets.

The major subtasks are:

- Review project requirements at a high level for clarification
- Review configuration worksheets
- Review custom reports
- Review of historical data migration from WIMS
- Review of EBDA data integration

Deliverable:

- Requirements Document
- EBDA integration plan

Phase IV: System Configuration

Timing: Day 36-108

Description:

Ethosoft will begin developing the test environment where all configuration and customization changes will be made. Ethosoft will begin making software changes based on the information gathered from the City in the prior analysis phase. The major subtasks are:

- Establish Ethosoft Test Configuration environment
- Develop Ethosoft configuration
- Configure Template data, schedule data, and Receiving data
- Create upload routines for 1 instrument requiring communication to and from the LIMS
- Install wedge software for 2 RS-232 port instruments

San Leandro will review the configuration data with Ethosoft via interactive web sessions so that they can (1) review and have input into the way the data is configured and (2) start to see how the data is related and interacts before formal training. The interactive web sessions will be 1-2 hours long, once per week (depending on schedules), with Ethosoft to go over the data and explain what is being observed or determining what needs to be changed

Representatives from the laboratory, operations and LIMS administrator(s) will need to attend the interactive sessions and be available to answer questions as they arise. San Leandro specialists will need to spend at least 2 hours per week as needed.

Deliverables:

- Functional Ethosoft test environment
- Review configuration data and routines with Ethosoft via interactive web sessions
- Instrument Integrations
- X-LIMS configured to accept, store, and report on EBDA data
- Custom (as defined in Section E, Items Ordered) reports delivered

Phase V: Validation Test Planning

Timing: Day 109-118

Description:

Ethosoft will work with the City while they create plans that will spell out the testing protocol for each instrument and integration that is required to test the data configuration in the system.

City staff will construct the validation plan and discuss the plan with Ethosoft.

Representatives from each laboratory section and LIMS administrator(s) will each need to budget at least several days for constructing and reviewing the plan.

Deliverable:

Agreed upon validation testing protocol.

Completion Criteria:

This task will be considered complete when a validation test has been agreed upon.

Phase VI: Installation and Training

Description:

Ethosoft will install the approved customized/configured product on the Cloud server. Ethosoft will also provide training to end users and to system administrators. Ethosoft will conduct end user training sessions for 3 days. End Users need to be available for 3 days for training.

The major subtasks are:

- Install configured X-LIMS system on the Cloud server
- Provide 2-day LIMS Administrator training. LIMS administrators need to be available for 2 consecutive days
- Provide 3-day LIMS End User training. End Users need to be available for 3 days for training.

Deliverables:

- Latest configured X-LIMS version installed and operating on the Cloud server
- Administrator and End-User Manuals
- Training Guides

Phase VII: Validation Testing

Timing: Day 128-168

Description:

The City will perform validation testing during this phase according to the scenarios specified by the City. During this time, the system will be run in parallel with the existing San Leandro data systems. Any issues with expected results will be logged with Ethosoft for resolution. The implementation specialist will be the main point of contact for any cases that are logged. Several days of time should be allocated to San Leandro's employees that are executing the validation plan. The exact amount of time will be determined by the scope of the validation plan.

Ethosoft will assign a case number to all issues that are raised during validation testing. The numbers will be tracked and (1) the resolution to the case will be noted or (2) an acceptable workaround will be offered for the issue logged.

San Leandro will sign off on the testing once the validation plan has been executed and all outstanding issues are accounted for with an acceptable resolution.

The major subtasks are:

- Document and Response to any City issues
- Status meetings as needed for issue resolution

Deliverables:

- Signed System Acceptance Document

Post Go-Live

Description:

Ethosoft will migrate 5 years of historical data from WIMS into X-LIMS for the City. The historical data needs to be provided by the City to Ethosoft in a consistent format.

The major subtasks are:

- Migrate historical WIMS data into X-LIMS

Deliverables:

- Five years of historical WIMS data available for reporting in X-LIMS

C. San Leandro Responsibilities

The successful completion of the proposed effort depends on the full commitment and participation of the City's management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the contract, and are to be provided at no charge to Ethosoft. Ethosoft's performance is predicated upon the following responsibilities being fulfilled by the City as scheduled in the project schedule. Delays in performance of these responsibilities by the City may result in additional cost and/or delay of the completion of the project, and may require invoking the Project Change Control Plan.

C.1 City Project Manager

Prior to the start of this project, the City will designate a person called the City Project Manager, to whom all Ethosoft communications will be addressed and who has the authority to act for the City.

C.2 City Project Manager's Responsibilities

City Project Manager's responsibilities include:

- Serve as the interface between Ethosoft and all City departments, organizations and sites participating in this project
- With the Ethosoft Project Manager, develop, administer, and accept all plans identified in this scope of services
- Attend the Project Kick-off/High Level Planning Session
- Work with Ethosoft to schedule the on-site activities (i.e., kick-off meeting, analysis work, training, etc.) at the City's location
- Attend project meetings to review the accomplishments and deliverables
- Ensure the Ethosoft resources have work space, access, and supplies as needed for on-site and remote work tasks defined in the project plan

C.3 Other San Leandro Responsibilities

- Provide security clearance and building access for Ethosoft project personnel when they are working on-site. Most of the work involved in this project will be performed during normal working hours (8:00am to 5:00 p.m. Pacific Time). However, on some occasions, the City may need to provide access to facilities outside of these hours
- Respond in a timely manner to Ethosoft request for information
- The City will provide suitable training computers and facilities
- Provide the "approved" personnel time to attend the training session on the new LIMS system

D. Project Change Control Procedure

The Project Change Control Plan is only invoked when a significant change is requested by the City that is outside the scope and activities listed in this Scope of Services (this is **NOT** a change management process). When Ethosoft and the City agree to a change in this Scope of Services, a written description of the agreed change (called a "Change Authorization") will be prepared, which both parties must sign.

The Change Authorization will describe the change, the rationale for the change, and specify any change in the charges, estimated schedule, or other terms. Depending on the extent and complexity of the requested changes, Ethosoft may charge for the effort required to perform the analysis.

When charges are necessary in order to analyze a change, Ethosoft will provide a written estimate and begin the analysis on written authorization. The terms of a mutually agreed upon Change Authorization will prevail over those of this Scope of Services or any previous Change Authorization.

E. Escalation Procedure

Ethosoft and the City will follow the escalation procedure specified below if resolution is required to address an issue arising during the performance of this Scope of Services. Resolution of an issue may necessitate the utilization of the Project Change Control Plan. Once an issue has been identified the identifying personnel will notify their respective focal point (the City Project Manager, and the Ethosoft Project Manager).

Level 1

The City Project Manager and the Ethosoft Project Manager will meet to resolve the issue.

Level 2

If the issue is not resolved within five (5) business days after being escalated to Level 1, the City Executive Sponsor will meet with the Ethosoft Project Executive to resolve the issue.

During any issue resolution, Ethosoft agrees to continue to provide services relating to items not in dispute, to the extent practicable pending resolution of the issue.

F. Description of Cloud Services

X-LIMS Cloud Services include: (a) one secure X-LIMS production site; (b) one secure test site; (c) up to ten GB of space for attachments (additional space may be added at an additional charge); (d) Telephone, e-mail, and Web site support; (e) application troubleshooting; (f) notify of planned downtime;

Fees. Annual fees are calculated based on the number of concurrent users plus the annual bandwidth fee. At the end of each year following year, Ethosoft will increase the fees by up to 5%. The first year of service commences on the day the Ethosoft installs the software on the production server and City staff are able to access it, as described in Exhibit A, Part A, Phase VI.

Ethosoft invoices the fees on an annual basis. The Client may only reduce the number of Users at the end of each year of service upon 60 days' prior written notice to Ethosoft. Additional users may be added at any time during the year and any associated fees will be added to the contract amount at that time.

License. Ethosoft shall provide X-LIMS software licenses for the number of Users in Exhibit B. A "Concurrent User" is (a) an individual authorized by Client to use the software instance through the assignment of a specific user login and is currently logged into the system. Use of the software shall be subject to the terms of the Ethosoft Cloud Services Agreement.

G. Ethosoft Service Level Policies

1.0 Software Support Schedule

- 1.1 Ethosoft shall provide software support unlimited email and telephone from 7 a.m. through 4 p.m. (Pacific Time) Monday through Friday, except for Holidays.
- 1.2 Ethosoft's software support shall not be available on following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; the day after Thanksgiving and Christmas Day.
- 1.3 Hours may be limited on other national holidays and/or days preceding or following certain holidays. Ethosoft shall notify the Customer two weeks' in advance if normal support times are to be changed on such days.

2.0 Hardware Uptime

- 2.1 Cloud hardware and software is guaranteed to have 99.9% uptime availability.
- 2.2 Ethosoft has the right to take cloud servers off-line after normal customer business hours for a reasonable amount of time for maintenance and/or application of software updates. Such down time will not count towards the 99.9% uptime availability. If the Cloud server will be down for extended periods of time, Ethosoft will notify the customer at least two weeks in advance.

3.0 Service Response Times

- 3.1 All support cases will receive a ticker number for incident tracking. Support incidents will be characterized as Production down, High, Medium, or Low priority issues.
 - 3.2 Support response times are within 1 hour for customer production down issues during normal support hours.
 - 3.3 Support response times are within 2 hours for customer high priority issues during normal support hours.
 - 3.4 Support response times are within 6 hours for customer medium priority issues during normal support hours.
- Support response times are within 1 day for customer low priority issues during normal support hours.

ITP
Process

EXHIBIT B**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES****Initial Project Cost**

Note that the travel costs are contingent on it being safe to travel and conduct in-person meetings. If it is determined that the risk of COVID-19 is too high, the funds originally earmarked for travel expenses will be used for additional consulting time, which would need to be higher

Quantity	Description	Unit Price	Line Total
1	Configuration of Custom Reports - Up To 5 Days of Work	\$5,000.00	\$5,000.00
	9.2.2 Chain of Custody for transfer of samples to contract labs 9.2.4 Lab Report by Project 9.2.5 Lab Report by Method/Parameter 9.2.6 Lab Report for Pretreatment Annual & Semi-annual data for metals and organics with Influent Effluent, and Biosolids samples		
1	Configuration of Custom CIWQS Reports - San Leandro and EBDA CIWQS	\$4,500.00	\$4,500.00
1	Migration of 5 Years of Historical EBDA Data from WIMS -- Migration of location and sample data from existing system to XLIMS assuming data is in consistent format	\$5,500.00	\$5,500.00
1	Integration of EBDA Data into X-LIMS -- Upload Excel data from the following 5 sources: 1 subcontractor lab, EBDA, USD, OLSD, COH, assuming data is in consistent format	\$6,500.00	\$6,500.00
2	Instruments Integration -- instruments with RS-232 serial ports requiring wedge software	\$350.00	\$700.00
1	Integration with SCADA system - OSISoft PI Historian	\$5,500.00	\$5,500.00
1	Insurance Requirement - Waiver of Subrogation	\$300.00	\$300.00
1	Initial 3-Day On-Site Requirement's	\$4,900.00	\$4,900.00

1	Travel for On-Site Requirement's Analysis -- Includes Flight, Hotel, and Car Rental	\$1,840.00	\$1,840.00
1	Total Per Diem for On-Site Requirement's Analysis	\$300.00	\$300.00
1	4-Day On-Site Installation and Training -- Includes End-User and Administrator Training	\$5,500.00	\$5,500.00
1	Travel for Installation and Training -- Includes Flight, Hotel, and Car Rental	\$2,150.00	\$2,150.00
1	Total Per Diem for Installation and Training	\$375.00	\$375.00
Total Initial Configuration			\$43,065.00

First Year Cloud User Cost

Years 2 through 5 will be increased by a maximum of 5%

QUANTITY	DESCRIPTION	UNIT	LINE
5	XLIMS - Laboratory Inf. Mgmt. System, 1- Cloud Concurrent User (\$115/month - License delivers all functionality included with X-LIMS such as:	\$1,380.00	\$6,900.00
	<ul style="list-style-type: none"> • Audit Anywhere • Alerting • Custody Tracking • DocumentXChange • Inventory Tracking • Excelerator • Quality Control • Workflow Management • Scheduler • Instrument Management • Invoicing • Ad-Hoc Reporting Tool • Dynamic Dashboard 		
1	Instrument Integration to X-LIMS [\$40/ month -- \$480 annually]	\$480.00	\$480.00
1	XLIMS - Laboratory Inf. Mgmt. System Yearly Cloud Bandwidth Fee (Including	\$3,860.00	\$3,860.00

		SUBTOTAL	\$11,240.00
		SALES TAX	
		TOTAL	\$11,240.00

Payment Schedule

Payment #1: Billed After Project Organization Meeting		
Item 1	50% of X-LIMS Concurrent User Annual Cloud License Fee	\$3,450.00
Item 2	Insurance - Waiver of Subrogation	\$300.00
Payment 1		\$3,750.00
Payment #2 Billed After Onsite Requirements Analysis		
Item 1	Initial 3-Day On-Site Requirement's Analysis	\$4,900.00
Item 2	Travel for On-Site Requirement's Analysis -- Includes Flight, Hotel, and Car Rental	\$1,840.00
Item 3	Per Diem for On-Site Requirement's Analysis -- Meals	\$300.00
Payment 2		\$7,040.00
Payment #3 Billed After System Configuration Signed Off by The City		
Item 1	2 Instruments Integrations – RS-232 serial port instruments requiring wedge software	\$700.00
Item 2	Integration of EBDA Data into X-LIMS – Upload Excel data from the following 5 sources: 1 subcontractor upload lab, EBDA, USD, OLSA, COH	\$6,500.00
Item 3	Integration with SCADA system - OSISoft PI Historian	\$5,500.00
Item 4	Configuration of Custom Reports – Up To 5 Days of Work	\$5,000.00
Item 5	Configuration of 2 Custom CIWQS Reports – EBDA CIWQS and San Leandro CIWQS	\$4,500.00
Payment 3		\$22,200.00

Payment #4 Billed After Installation and Initial Training		
Item 1	Remaining 50% of X-LIMS Concurrent User Annual Cloud License Fee	\$3,450.00
Item 2	Annual Instrument Integration to X-LIMS Fee	\$480.00
Item 3	4-Day On-Site Installation and Training -- Includes End-User and Administrator Training	\$5,500.00
Item 4	Travel for On-Site Installation and Training -- Includes Flight, Hotel, and Car Rental	\$2,150.00
Item 5	Per Diem for Installation and Training – Meals	\$375.00
Item 6	XLIMS - Laboratory Inf. Mgmt. System Yearly Cloud Bandwidth Fee (Including Support & Maintenance)	\$3,860.00
Payment 4		\$15,815.00
Payment #5 Billed Post Go-Live		
Item 1	5 Years of Historical WIMS Data Migration	\$5,500.00
Payment 5		\$5,500.00
Year 1 Total		\$54,305.00

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

EXHIBIT D

The novel coronavirus (“COVID-19”) has been declared a worldwide pandemic by the World Health Organization. The City of San Leandro is currently in a local emergency and state of emergency due to the COVID-19 pandemic.

COVID-19 is extremely contagious, and is believed to spread mainly from person-to-person contact, through touched surfaces, and in airborne particles. As a result, federal, state, and local governments, including the City of San Leandro, and federal, state, county, and local health agencies recommend social distancing and additional cleaning protocols to limit the spread of the disease. The City has taken steps and put in place preventative measures recommended by federal, state, and local health agencies to reduce the spread of COVID-19. These measures include steps each person must take to prevent the spread of COVID-19 and include, but are not limited to, requiring face coverings, frequent hand washing and/or use of hand sanitizer, social distancing where possible, limiting of person-to-person contact, frequent cleanings of high-touch surfaces, and avoiding entering any building if they have COVID-19 symptoms.

Consultant shall obey all local orders and abide by all applicable preventative measures recommended by federal, state, county, and local health agencies and any preventative measures specifically implemented by the City. Consultant agrees that when entering any City buildings, Consultant will follow all COVID-19 related signage, wear a face covering, follow all social distancing protocols, and abide by any other COVID-19 preventative measure that are in place when performing the services described in this Agreement. Consultant shall also adhere to any subsequently communicated COVID-19 preventative measures as directed by City staff. The COVID-19 preventative measures are subject to change over time, and Consultant shall maintain knowledge of and adhere to the current COVID-19 preventative measures when interacting with City employees, officials, volunteers, agents, and representatives, and when entering City buildings.

EXHIBIT E

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with California Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of

prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be submitted directly to the Labor Commission, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the

Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

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EXHIBIT F

ETHOSOFT CLOUD SERVICES AGREEMENT

This Ethosoft Cloud Services Agreement (this “Agreement”) is between Ethosoft, Inc. (“Ethosoft”) and the City of San Leandro (“The Client”). This Agreement sets forth the terms and conditions that govern orders placed by The Client for Services under this Agreement.

1. AGREEMENT DEFINITIONS

1.1 “Availability” is The Client's ability to access/use the subscribed X-LIMS Cloud environment and resources within the committed timeframes.

1.2 “Ancillary Program” means any software agent or tool owned or licensed by Ethosoft that Ethosoft makes available to The Client for download as part of the Cloud Services for purposes of facilitating The Client access to, operation of, and/or use with, the Services Environment. The term “Ancillary Program” does not include Separately Licensed Third Party Technology.

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1.4. “Cloud Services” means, collectively, the Ethosoft cloud services (e.g., Ethosoft software as a service offerings and related Ethosoft Programs) listed in The Client’s order and defined in the Service Specifications, which are defined in Section G of Exhibit A. The term “Cloud Services” does not include Professional Services.

1.5 “Downtime” refers to time during which a computer system or network is not available for use. Downtime occurs in two forms, planned and unplanned. Planned Downtime is forecast by the owner of the affected system(s) and is used for maintenance, upgrades, or other system management activities. Unplanned Downtime is defined as any Downtime that is not planned. Causes for Unplanned Downtime include, but are not limited to: hardware or software failures, power outages, telecommunications network failures, or human error.

1.6 “Ethosoft Programs” refers to the software products owned or licensed by Ethosoft to which Ethosoft grants The Client access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services. The term “Ethosoft Programs” does not include Separately Licensed Third Party Technology.

1.7. “Professional Services” means, collectively, the consulting and other professional Services which The Client has ordered. Professional Services include any deliverables described in The Client’s order and delivered by Ethosoft to The Client under the order. The term “Professional Services” does not include Cloud Services.

1.8. “Separately Licensed Third Party Technology” refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.

1.3. “Services” means, collectively, both the Cloud Services and Professional Services that The Client has ordered.

1.10. “Services Environment” refers to the combination of hardware and software components owned, licensed or managed by Ethosoft to which Ethosoft grants The Client and The Client Users access as part of the Cloud Services which The Client has ordered. As applicable and subject to the terms of this Agreement and The Client’s order, Ethosoft Programs, Third Party Content, The Client Content and The Client Applications may be hosted in the Services Environment.

1.11. “Services Period” refers to the period of time for which The Client ordered Cloud Services as specified in The Client’s order.

1.12. “Third Party Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Ethosoft and made available to Client through, within, or in conjunction with The Client use of, the Cloud Services. Examples of Third Party Content include data feeds from social network services, RSS feeds from blog posts, and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third Party Technology.

1.13. “Users” means those employees, contractors, and end users, as applicable, authorized by The Client or on The Client’s behalf to use the Cloud Services in accordance with this Agreement and The Client’s order.

1.14. “Client” and **“The Client”** refers to the individual or entity that has executed this Agreement.

1.15. “The Client Applications” means all software programs, including any source code for such programs, that The Client or The Client Users provide and load onto, or create using, any Ethosoft “platform-as-a-service” or “infrastructure-as-a-service” Cloud

Services. Services under this Agreement, including Ethosoft Programs and Services Environments, Ethosoft intellectual property, and all derivative works thereof, do not fall within the meaning of the term “The Client Applications.”

1.16. “The Client Content” means all text, files, images, graphics, illustrations, information, data (including Personal Data as that term is defined in the Data Processing Agreement for Ethosoft Cloud Services described in Section 11.2 below), audio, video, photographs and other content and material (other than The Client Applications), in any format, provided by The Client or The Client Users that reside in, or run on or through, the Services Environment.

1.17 Major Enhancement means any major functional revision to the Licensed Software (designated by a renumbered release number such as 3.4 to 4.0) released by Ethosoft during the Initial Support Term or any Renewal Support Term.

1.18 Minor Enhancement means any minor release, update, modification or "bug fix" which does not necessarily provide materially new functionality, as determined by Ethosoft in its sole discretion, and made generally available to Ethosoft's supported customers.

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3. RIGHTS GRANTED

3.1 For the duration of the Services Period and subject to The Client payment obligations, and except as otherwise set forth in this Agreement or The Client's order, The Client has the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services that The Client ordered, including anything developed by Ethosoft and delivered to The Client as part of the Services, solely for The Client internal business operations and subject to the terms of this Agreement and The Client's order, including the Service Specifications. The Client may allow The Client Users to use the Services for this purpose and The Client is responsible for The Client Users' compliance with this Agreement and the order.

3.2 The Client do not acquire under this Agreement any right or license to use the Services, including the Ethosoft Programs and Services Environment, in excess of the scope and/or duration of the Services stated in The Client's order. Upon the end of the Services ordered, The Client right to access and use the Services will terminate.

3.3 To enable Ethosoft to provide The Client and The Client Users with the Services, The Client grant Ethosoft the right to use, process and transmit, in accordance with this Agreement and The Client's order, The Client Content and The Client Applications for the duration of the Services Period plus any additional post-termination period during which Ethosoft provides The Client with access to retrieve export data of The Client Content and The Client Applications.

3.4 Except as otherwise expressly set forth in The Client's order for certain Cloud Services offerings (e.g., a private cloud hosted at The Client facility), The Client acknowledges that Ethosoft has no delivery obligation for Ethosoft Programs and will not ship copies of such programs to The Client as part of the Services.

4. OWNERSHIP AND RESTRICTIONS

4.1 The Client retain all ownership and intellectual property rights in and to The Client Content. Ethosoft or its licensors retain all ownership and intellectual property rights to the Services, including Ethosoft Programs and Ancillary Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of Ethosoft under this Agreement.

4.2 The Client may not, or cause or permit others to:

- a) remove or modify any program markings or any notice of Ethosoft's or its licensors' proprietary rights;
- b) make the programs or materials resulting from the Services (excluding The Client Content) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services The Client has acquired);
- c) modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Ethosoft;
- d) perform or disclose any benchmark or performance tests of the Services, including the Ethosoft Programs, without Ethosoft's prior written consent;

e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure without Ethosoft's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and

f) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Ethosoft Programs, Ancillary Programs, Services Environments or materials available, to any third party, other than as expressly permitted under the terms of the applicable order.

4.3 The rights granted to The Client under this Agreement are also conditioned on the following:

a) except as expressly provided herein or in The Client's order, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and

b) The Client make every reasonable effort to prevent unauthorized third parties from accessing the Services.

5. SERVICE SPECIFICATIONS

5.1 The Services are subject to and governed by Service Specifications applicable to The Client's order. Service Specifications may define provisioning and management processes applicable to the Services (such as capacity planning), types and quantities of system resources (such as storage allotments), functional and technical aspects of the Ethosoft Programs, as well as any Services deliverables. The Client acknowledge that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit The Client to exceed the ordered quantity (e.g., soft limits on counts for Users, sessions, storage, etc.), then The Client is responsible for promptly purchasing additional quantity to account for The Client excess usage. The Client shall be notified in writing of the need to increase the quantity of service provided and will have 30 days from the receipt of written notification to purchase such additional quantity. For any month that The Client does not purchase such additional quantity within 30 days of from the receipt of notification, Ethosoft may require The Client to pay, in addition to the fees for the additional quantity, an excess usage fee for those Services equivalent to 10% of the total fees for the month in which such excess usage occurred.

5.2 Ethosoft may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Specifications are subject to change at Ethosoft's discretion; however, Ethosoft changes to the Service Specifications will not result in a material reduction in the level of performance or availability of the applicable Services provided to The Client for the duration of the Services Period.

5.3 As described in the Service Specifications and to the extent applicable to the Cloud Services that The Client has ordered, Ethosoft will provide production, and data backup for The Client's order. Ethosoft and its affiliates may perform certain aspects of Cloud Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery).

6. USE OF THE SERVICES

6.1 The Client is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating The Client and The Client Users' usernames, passwords and accounts with Ethosoft, The Client accept responsibility for the timely and proper termination of user records in The Client local identity infrastructure or on The Client local computers. Ethosoft is not responsible for any harm caused by The Client Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in The Client local identity management infrastructure or The Client local computers. The Client is responsible for all activities that occur under The Client and The Client Users' usernames, passwords or accounts or as a result of The Client or The Client Users' access to the Services, and agree to notify Ethosoft immediately of any unauthorized use.

6.2 The Client agree not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including The Client Content, The Client Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Ethosoft under this Agreement, Ethosoft reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the removal or disablement of access to such material. Ethosoft shall have no liability to The

Client in the event that Ethosoft takes such action. The Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of The Client Content and The Client Applications.

6.3 The Client is required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the Ethosoft Program. Except for emergency or security related maintenance activities, Ethosoft will coordinate with The Client the scheduling of application of Patches, where possible, based on Ethosoft's next available standard maintenance window.

8. FEES AND TAXES

8.1 All fees payable to Ethosoft are due within 30 days from the invoice date. Once placed, The Client's order is non-cancelable and the sums paid nonrefundable, except as provided in this Agreement or The Client's order.

8.2 The Client understands that The Client may receive multiple invoices for the Services The Client ordered. Invoices will be submitted to The Client pursuant to the contact information provided by The Client to Ethosoft.

8.3 The Client agrees and acknowledges that The Client has not relied on the future availability of any Services, programs or updates in entering into the payment obligations in The Client's order; however, the preceding does not relieve Ethosoft of its obligation during the Services Period to deliver Services that The Client has ordered per the terms of this Agreement.

9. SERVICES PERIOD; END OF SERVICES

9.1 Services provided under this Agreement shall be provided for the Services Period defined in The Client's order, unless earlier suspended or terminated in accordance with this Agreement or the order.

9.2 Upon the end of the Services, The Client no longer have rights to access or use the Services, including the associated Ethosoft Programs and Services Environments; however, at The Client's request, and for a period of up to 60 days after the end of the applicable Services, Ethosoft will make available to The Client Client Content as existing in the Services Environment on the date of termination. At the end of such 60 day period, and except as may be required by law, Ethosoft will delete or otherwise render inaccessible any of The Client Content and The Client Applications that remain in the Services Environment.

9.3 Ethosoft may temporarily suspend The Client password, account, and access to or use of the Services if The Client or The Client Users violate any provision within the 'Rights Granted', 'Ownership and Restrictions', 'Fees and Taxes', 'Use of the Services', or 'Export' sections of this Agreement, or if in Ethosoft's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Ethosoft will provide advance notice to The Client of any such suspension in Ethosoft's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Ethosoft will use reasonable efforts to re-establish the affected Services promptly after Ethosoft determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Ethosoft will make available to The Client Client Content and The Client Applications as existing in the Services Environment on the date of suspension. Ethosoft may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 days after Ethosoft's initial notice thereof. Any suspension or termination by Ethosoft under this paragraph shall not excuse The Client from The Client obligation to make payment(s) under this Agreement.

9.4 If either of us breaches a material term of this Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the order under which the breach occurred. If Ethosoft terminates the order as specified in the preceding sentence, The Client must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services ordered under this Agreement plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. The Client agree that if The Client is in default under this Agreement, The Client may not use those Services ordered.

9.5 If The Client has used an Ethosoft Financing contract to pay for the fees due under an order and The Client is in default under that contract, The Client may not use the Services that are subject to such contract.

10. SOFTWARE SUPPORT

The software support services to be provided by Ethosoft pursuant to this Agreement are as follows:

10.1 Ethosoft will provide The Client with reasonable help desk assistance during the Support Times regarding the installation and implementation of the Licensed Software, and the identification, diagnosis and correction of Errors. Ethosoft will attempt to resolve any support questions posed by The Client. If Ethosoft determines that it would be appropriate to do so, Ethosoft may defer resolution of a support question until a later time. At its discretion, Ethosoft may provide The Client with help desk support during times other than the Support Time and/or beyond the maximum number of monthly and/or annual Support Incident limits (if

applicable) at Ethosoft's then standard rates. The Client shall be responsible for paying charges for such additional help desk support.

10.2 Ethosoft will provide The Client with copies of all Minor Enhancements at no additional cost to The Client.

10.3 Ethosoft will provide The Client with copies of all Major Enhancements at no additional cost to The Client.

10.4 To obtain Error correction services, The Client must notify Ethosoft immediately of any suspected Error and must provide Ethosoft with reasonable detail of the nature of and circumstances surrounding the Error. "Reasonable detail" includes complete software, hardware and network configuration information as requested by Ethosoft.

10.5 **Ethosoft** may perform remote diagnostics to determine the existence and nature of an Error.

10.6 Ethosoft will make reasonable commercial efforts to correct and resolve Errors that The Client reports to Ethosoft and which Ethosoft is able to reproduce. The Client will promptly provide Ethosoft with all information requested by Ethosoft to reproduce such Errors. For each such Error, Ethosoft will use reasonable commercial efforts to provide The Client with a workaround, a software patch or, if Ethosoft is unable to provide The Client with either of the foregoing, a specific action plan for addressing the Error, including a good faith estimate of the time required to correct and resolve such Error.

10.7 Ethosoft will use reasonable commercial efforts to communicate with The Client, by telephone, e-mail, fax or Ethosoft's website regarding Errors that The Client reports to Ethosoft during the Support Times; for purposes of this Agreement, a "response" means Ethosoft's acknowledgment of an Error, and does not necessarily mean that a resolution will be achieved.

10.8 Notwithstanding anything to the contrary elsewhere in this Agreement, Ethosoft will have no obligation to provide any support services to The Client if: (a) Such support relates to or involves any products, data, features, devices or equipment not provided by Ethosoft; (b) The Client or a third party has altered or modified any portion of the Licensed Software in any manner without the prior written consent of Ethosoft.

10.9 The Support Times for Ethosoft software support are as follows: Monday through Friday, 9:00 a.m. through 5:00 p.m. (Pacific Time), excluding the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. Additionally, hours may be limited on other national holidays and/or days preceding or following certain holidays.

11. THE CLIENT OBLIGATIONS

The Client shall designate in writing one employee and one alternate as its "**Support Contacts**" to be generally available during the Support Times to confer with Ethosoft regarding Errors and other support-related issues. The Client shall notify Ethosoft immediately of any changes in the persons designated as Support Contacts.

12. SERVICE LEVELS

12.1 An Annual Availability Commitment of 99.9% is provided for the X-LIMS Cloud hardware, network, software and software.

12.2 The Client must be able to access the X-LIMS Cloud resources subscribed to under this Agreement. The Availability is determined based on 24 hours per day and 7 days per week except for times of unavailability due to Planned Downtime and exclusions such as: (i) planned maintenance windows for which Ethosoft provides at least 48 hours prior notice whenever possible; (ii) failure of any Network or Internet Infrastructure not owned or managed by Ethosoft (iii) Downtime caused by any failure of The Client's computer systems, network, hardware or software or its telecommunications equipment or other equipment; (iv) Downtime caused by any act or omission of any End user that is inconsistent with Ethosoft's suggested use or Client's authorized use of the system; (v) Downtime caused by events beyond Ethosoft's reasonable control.

12.3 Service Level Credit - in the event that The Client cannot access the system for any reason other than those listed above, Ethosoft will provide a Service Level Credit. The Client may request a credit on their next invoice for up to ten days of service interruption, based upon the amount of time the system was unavailable. Service Level Credits must be requested in writing within ten days of the interruption.

13. NONDISCLOSURE

13.1 By virtue of this Agreement, the parties may have access to information that is confidential to one another (“Confidential Information”). We each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to the terms and pricing under this Agreement, The Client Content residing in the Services Environment, and all information clearly identified as confidential at the time of disclosure.

13.2 A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

13.3 We each agree not to disclose each other’s Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the termination of the contract; however, Ethosoft will hold The Client Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. We each may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Ethosoft will protect the confidentiality of The Client Content residing in the Services Environment in accordance with the Ethosoft security practices defined as part of the Service Specifications applicable to The Client’s order. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

14. DATA PROTECTION

14.1 In performing the Services, Ethosoft will comply with the following data backup policy:

- a) Ethosoft agrees to, at minimum, a daily full backup and incremental hourly backups of The Client Content.

14.2 Ethosoft agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity.

14.3 The Client is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from The Client Content, including any viruses, Trojan horses, worms or other programming routines contained in The Client Content that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.

15. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

15.1 ETHOSOFT WARRANTS THAT IT WILL PERFORM (I) CLOUD SERVICES IN ALL MATERIAL RESPECTS AS DESCRIBED IN THE SERVICE SPECIFICATIONS, AND (II) PROFESSIONAL SERVICES IN A PROFESSIONAL MANNER IN ACCORDANCE WITH THE SERVICE SPECIFICATIONS. IF THE SERVICES PROVIDED TO THE CLIENT WERE NOT PERFORMED AS WARRANTED, THE CLIENT MUST PROMPTLY PROVIDE WRITTEN NOTICE TO ETHOSOFT THAT DESCRIBES THE DEFICIENCY IN THE SERVICES (INCLUDING, AS APPLICABLE, THE SERVICE REQUEST NUMBER NOTIFYING ETHOSOFT OF THE DEFICIENCY IN THE SERVICES).

15.2 ETHOSOFT DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ETHOSOFT WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH THE CLIENT CONTENT, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY ETHOSOFT, AND (C) THE SERVICES WILL MEET THE CLIENT

REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. THE CLIENT ACKNOWLEDGE THAT ETHOSOFT DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ETHOSOFT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. ETHOSOFT IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM THE CLIENT CONTENT, THE CLIENT APPLICATIONS OR THIRD PARTY CONTENT. ETHOSOFT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

15.3 THE SOFTWARE SUPPORT SERVICES UNDER THIS AGREEMENT WILL BE PROVIDED IN A WORKMAN-LIKE MANNER BY INDIVIDUALS WHO ARE KNOWLEDGEABLE IN THE OPERATION OF THE LICENSED SOFTWARE.

ALL SOFTWARE BUG FIXES, WORK-AROUNDS, ERROR CORRECTIONS AND ENHANCEMENTS ARE PROVIDED ON AN "AS IS" BASIS. ETHOSOFT DOES NOT WARRANT THAT ALL ERRORS WILL BE CORRECTED.

15.3 FOR ANY BREACH OF THE SERVICES WARRANTY, THE CLIENT EXCLUSIVE REMEDY AND ETHOSOFT'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ETHOSOFT CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, THE CLIENT MAY END THE DEFICIENT SERVICES AND ETHOSOFT WILL REFUND TO THE CLIENT THE FEES FOR THE TERMINATED SERVICES THAT THE CLIENT PRE-PAID TO ETHOSOFT FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

15.4 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

16. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, ETHOSOFT SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. ETHOSOFT'S MAXIMUM LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CLIENT'S ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE HIGHER OF (A) THE TOTAL AMOUNTS ACTUALLY PAID TO ETHOSOFT FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM LESS ANY REFUNDS OR CREDITS RECEIVED BY THE CLIENT FROM ETHOSOFT UNDER SUCH ORDER OR (B) A SUM WHICH IS EQUAL TO 6 TIMES OF THE AVERAGE AMOUNT FOR A MONTH'S LICENSE FEE CALCULATED OVER THE AGGREGATE OF ALL SUMS PAID AND PAYABLE BY CLIENT TO ETHOSOFT UP TO THE DATE OF THE RELEVANT CLAIM.

17. CONSEQUENTIAL DAMAGES

REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL ETHOSOFT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, EVEN IF ETHOSOFT KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE

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19. EQUAL OPPORTUNITY AND NON-DISCRIMINATION.

Ethosoft agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, gender, height, weight, disability or marital status.

20. SERVICES TOOLS AND ANCILLARY PROGRAMS

20.1 Ethosoft may use tools, scripts, software, and utilities (collectively, the "Tools") to monitor and administer the Services and to help resolve The Client Ethosoft service requests. The Tools will not collect or store any of The Client Content or The Client Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding The Client Content and The Client Applications) may also be used to assist in managing Ethosoft's product and service portfolio, to help Ethosoft address deficiencies in its product and service offerings, and for license and Services management.

20.2 As part of the Cloud Services, Ethosoft may provide The Client with on-line access to download certain Ancillary Programs for use with the Services. If Ethosoft does not specify Separate Terms for such Ancillary Programs, The Client shall have a non-transferable, non-exclusive, non-assignable, limited right to use such Ancillary Programs solely to facilitate The Client access to,

operation of, and/or use of the Services Environment, subject to the terms of this Agreement and The Client's order. The Client's right to use such Ancillary Programs will terminate upon the earlier of Ethosoft's notice (which may be through posting on <https://support.Ethosoft.com> or such other URL designated by Ethosoft), the end of the Cloud Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

21. SERVICE ANALYSES

Ethosoft may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated and anonymous form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Ethosoft may make Service Analyses publicly available; however, Service Analyses will not incorporate The Client Content or Confidential Information in a form that could serve to identify The Client or any individual, and Service Analyses do not constitute Personal Data. Ethosoft retains all intellectual property rights in Service Analyses.

22. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or The Client obligation to pay for the Services.

23. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by laws of the State of California, exclusive of its conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. The controlling language of this Agreement, and any proceedings relating to this Agreement, shall be English. You agree to bear any and all costs of translation, if necessary. The headings to the sections of this Agreement are used for convenience only and shall have no substantive meaning. All questions concerning this Agreement shall be directed to: Ethosoft, Inc., 6050 Peachtree Parkway, Suite 240 #249, Norcross, GA 30092.

24. NOTICE

24.1 Any notice required under this Agreement shall be provided to the other party in writing. If The Client has a dispute with Ethosoft or if Client wishes to provide a notice under the Indemnification Section of this Agreement, or if The Client become subject to insolvency or other similar legal proceedings, The Client will promptly send written notice to: Ethosoft, Inc., 6050 Peachtree Parkway, Suite 240 #249, Norcross, GA 30092. Attention: Legal Department.

24.2 To request the termination of Services in accordance with this Agreement, The Client must submit a service request to Ethosoft at the address specified in The Client's order or the Service Specifications.

24.3 Ethosoft may give notices applicable to Ethosoft's Cloud Services customer base by means of a general notice on the Ethosoft portal for the Cloud Services, and notices specific to The Client by electronic mail to The Client e-mail address on record in Ethosoft's account information or by written communication sent by first class mail or pre-paid post to The Client address on record in Ethosoft's account information.

25. ASSIGNMENT

The Client may not assign this Agreement or give or transfer the Services (including the Ethosoft Programs) or an interest in them to another individual or entity. If The Client grant a security interest in any portion of the Services, the secured party has no right to use or transfer the Services or any deliverables. Ethosoft may not assign this Agreement or give or transfer the provided services to The City to another entity without written permission from The City.

26. TITLE

Title, ownership rights and intellectual property rights in and to the Software and Documentation shall at all times remain with Ethosoft. All rights not specifically granted by this Agreement, including Federal and international copyrights, are reserved by Ethosoft.

27. COPYRIGHT

The Software, including its structure, organization, code, user interface and associated Documentation, is a proprietary product of Ethosoft and is protected by international laws of copyright. The law provides for civil and criminal penalties for anyone in violation of the laws of copyright.

28. OTHER

28.1 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

28.2 The Client agree to provide Ethosoft with all information, access and full good faith cooperation reasonably necessary to enable Ethosoft to provide the Services and The Client will perform the actions identified in The Client's order as The Client responsibilities.

28.3 The Client remain solely responsible for The Client regulatory compliance in connection with The Client use of the Services. The Client is responsible for making Ethosoft aware of any technical requirements that result from The Client regulatory obligations prior to entering into an order governed by this Agreement. Ethosoft will cooperate with The Client efforts to determine whether use of the standard Ethosoft Services offering is consistent with those requirements.