

CITY OF HENDERSON INDICATIVE TECHNOLOGY CONTRACTING CONDITIONS

- Venue is in the state and federal courts located in Clark County, Nevada.
- Governing law is the State of Nevada.
- Any reference to a “business day” refers to a day that is not a Friday, Saturday, Sunday or legal holiday for State of Nevada or City governmental offices.
- Contracts shall be subject to the City’s obligations under public records laws and regulations.
- Supplier must warrant and represent that to its knowledge there is no relationship with any City employee, appointed official, or elected official that would create a conflict of interest.
- Supplier must comply with all applicable laws and regulations.
- Any supplier modification of any aspects of software or cloud services shall not materially degrade or have a material adverse effect on the functionality or operability of the services, supplier’s level of effort in performing the services, supplier’s obligations, or the City’s rights.
- Supplier shall continuously monitor, manage, repair and maintain the services to optimize service availability by proactively monitoring its systems to detect threats to availability and actual outages, taking remedial measures to eliminate any identified threats, and promptly notifying the City of any downtime. Supplier is responsible for all updates, bug fixes, enhancements, new releases, new versions, and other improvements to the services.
- Supplier shall update on-premise computer software included in services and cause it to operate under new versions or releases of operating systems and/or databases required by such software and provide timely support and maintenance for any future releases of such operating systems and/or databases.
- Supplier must provide an update to on-premise computer software supporting a newer version of third-party platform components within a timeframe set by the City that is in advance of supplier’s termination of support for such third-party components.
- Any data or information disclosed or made available to supplier or collected or created by supplier for the City in connection with the services or otherwise contemplated by the relation between the City and supplier, is provided by the City “AS-IS” and without warranties of any kind, whether express or implied.
- Supplier shall store, safeguard and process the City data in the United States on behalf of and for the benefit of the City,
- Supplier shall use City data strictly as instructed by the City and solely as necessary to provide the services for the City’s benefit in accordance with applicable laws.
- Supplier shall not use City data to improve or “train” the supplier’s services, or provide services to, or for the benefit of, other customers or third parties.
- Supplier shall not use City data in any manner which would render supplier unable to effectively separate the City data from supplier’s intellectual property and other data.
- Supplier shall disclose any usage of artificial intelligence, algorithms, generative artificial intelligence, and/or machine learning. Supplier shall not use any such “AI tools” or software in connection with City data without express written authorization.
- Suppliers who host or manage City data must comply with the City’s information security terms and conditions.
- The City will not bear risk for the professional errors and omissions, wrongful or negligent acts or omissions of the supplier.

- Supplier must comply with City insurance and business continuity requirements. The City will not bear risk for matters within the appropriate scope of supplier's risk management program or business continuity planning.
- Suppliers must indemnify the City for, from and against property damage, personal injury, workers comp claims, loss or misuse of data, infringement of intellectual property rights, including misappropriation of trade secrets, and failure to comply with law.
- The City will not be liable to supplier for any consequential, indirect, exemplary or incidental damages.
- Any limitations of liability set forth in the agreement must exclude supplier liability for indemnification, breach of confidentiality, infringement or misappropriation of intellectual property rights, and indirect damages relating to supplier security incidents.

The foregoing is not intended to be an exhaustive list, but rather general requirements for all contracts for information technology services regardless of type (e.g., software, goods, deliverables, professional services, etc.).

CITY OF HENDERSON INSURANCE REQUIREMENTS

5. INSURANCE.

(a) General. Provider and each subcontractor, at no cost to the City, shall maintain in full force and effect throughout the Term the following insurance coverage with limits of liability not less than those stated below. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City. Provider shall include all subcontractors as insured under its policies or shall furnish separate certificates or endorsements for each subcontractor. This Section is not intended to and shall not be construed to waive, restrict or limit the liability of either Party for any obligations under this Agreement, including obligations of a Party to indemnify, defend and hold harmless the other Party. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis. The City reserves the right to modify these requirements, including limits, based on the facts and circumstances of Services, nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- (1) Commercial General Liability: This policy shall include bodily injury, property damage and broad form contractual liability coverage:

Each Occurrence: \$1,000,000
Personal & Advertising Injury: \$1,000,000
Products – Completed Operations Aggregate \$1,000,000
General Aggregate: \$2,000,000

- (2) Cyber Security and Privacy Liability Insurance: The policy shall provide coverage to include but not limited to liability arising from the theft, dissemination and/or use of confidential information, including but not limited to, personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, security codes or personal identification numbers (PINS); Notification costs, credit monitoring and other expert services, regulatory fines, penalties and defense costs; Network security liability arising from unauthorized access to, use of, or tampering with computer systems, including hacker attacks and social engineering; Liability arising from the introduction of a computer virus into, or otherwise causing damage to vendor (first party) or customer’s (third party) computer, computer system, network or similarly related property and the data, software and programs thereon; Liability arising from professional misconduct or lack of the requisite skill required for the performances of services.

Each Claim: \$2,000,000
Annual Aggregate: \$5,000,000

- (3) Technical Professional Liability Insurance (Errors and Omissions) with Cyber Protection: Coverage shall include but not limited to all acts, errors, omissions, negligence, loss, damage, theft or other misuse of data, infringement, invasion of privacy and breach of data, and other network security and privacy, including, but not limited to, unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for regulatory defense and penalties, data breach expenses payable whether incurred by Provider or the City, including, but not limited to consumer notification, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City or on behalf of the City. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaking by Provider 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, social engineering and network security. The policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided. The policy shall provide for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Each Claim: \$2,000,000

Annual Aggregate: \$5,000,000

- i) If the Technical Professional Liability insurance required by this Agreement is written on a claims-made basis, then Provider warrants and shall ensure that any retroactive date under that policy shall precede the Effective Date and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time the Services are completed and accepted by the City.
- (4) Automotive Liability: This policy shall provide coverage for bodily injury and property damage for any owned, hired, leased, borrowed, and non-owned vehicles used in the performance of this Agreement: combined single limit for bodily injury and property damage for each occurrence: \$1,000,000
- (5) [Reserved]
- (6) Workers' Compensation and Employer's Liability: The policy shall contain a waiver of subrogation endorsement in favor of the City. Workers' Compensation: Statutory Employers' Liability:

Each Accident: \$1,000,000

Disease/Employee: \$1,000,000

Disease/Policy Limit: \$1,000,000

- (b) Effectiveness. To the extent any of the insurance required by this Agreement is written on a claims made basis, Provider warrants and shall ensure that any retroactive date under that policy shall precede the effectiveness of this Agreement and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time the Services are completed and accepted by the City or the termination of this Agreement (whichever is later). Provider shall give thirty (30) days prior written notice to the City of any cancellation, non-renewal, or material change in coverage, scope or amount of any insurance policy required by or affecting the City's rights or remedies under this Agreement.

- (c) Additional Requirements. Provider's insurance coverage must comply with the following:

- (1) All policies shall be written by a company with a current A.M. Best's rating of not less than A:VII.
- (2) Provider's coverage shall contain no special limitations on the scope of protection afforded to the City.
- (3) Provider's coverage shall be primary and noncontributory with respect to all other available sources and with respect to the City, its officers, officials, employees, volunteers and agents.
- (4) Provider's coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) The cyber security and privacy liability, commercial general liability and automotive liability policies must contain a waiver of subrogation endorsement for the City and contain, or be endorsed to include the City, its officers, officials, employees, agents, and volunteers as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of

Provider; products and completed operations of Provider, premises occupied or used by Provider (its officers, employees, agents, subcontractors).

- (d) Certificates. Provider shall furnish the City within ten (10) business days with a certificate(s) of insurance and policy endorsements, using the ACORD 25 form or a form substantially similar, containing a reference to the CMTS number of this Agreement that is signed by an authorized representative for all insurance coverage required under this Agreement. All deductibles and self insured retentions(s) shall be fully disclosed in the Certificates of Insurance. All certificates must be sent by Provider to City of Henderson,

Risk Management
240 S. Water St, P.O. Box 95050,
MSC 121
Henderson, NV 89009-5050 and
riskmanagement@cityofhenderson.com.

- (e) Cancellation. Should any of the described policies be canceled before the expiration date thereof, notice will be delivered in accordance with the policy provisions (pursuant to ISO ACORD Form 25, current revision), and in such event Provider shall promptly provide written notice to City Risk Management. If any of the insurance coverage required hereunder is canceled and not replaced, is reduced or is restricted, the City may terminate this Agreement for cause without penalty or further obligation or liability to Provider.