

**AGREEMENT
BETWEEN VIRIDIS LEARNING, INC. AND CITY OF SAN ANTONIO
FOR
A SAAS WORKFORCE DEVELOPMENT TRACKING PLATFORM**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter also referred to as “City” or “Program Administrator” acting by and through its City Manager, pursuant to Ordinance No. _____ approved this _____ day of _____, 2019, and Viridis Learning, Inc. by and through its CEO (hereinafter also referred to as “Platform Provider”) both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Director” shall mean the director of City’s Economic Development Department or his or her designee.
- 1.3 “Platform Provider” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.4 “Program Administrator” is defined in the preamble of this Agreement and includes its successors and assigns.

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on March 30, 2019 and terminate on September 30, 2019.
- 2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

III. SCOPE OF SERVICES

- 3.1 Platform Provider agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

Contingent upon City designating FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000.00) towards the license and use of the SAAS Workforce Development Tracking Platform (the "Project"), and fully executing this Agreement, City agrees to act as the Project Administrator for the Project and Platform Provider hereto agree to abide by the terms and deliverables contained in the following documents, which are subject to change upon the Parties' agreement:

- A. Viridis Project Plan
- B. Viridis Licensing Agreement
- C. Viridis Security Plan

- 3.2 In addition to the services described in 3.1, Platform Provider shall provide Program Administrator with its most up-to-date software and with access to its technical support staff should Program Administrator encounter any service issues.

- 3.3. All work performed by Platform Provider hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Platform Provider, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Platform Provider's software become unsatisfactory to Director; however, City shall have no obligation to terminate and City may withhold payment to Platform Provider for any unsatisfactory product, as stated herein, even should City elect not to terminate. City shall notify Platform Provider in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

IV. COMPENSATION TO PLATFORM PROVIDOR

- 4.1 In exchange for Platform Provider granting a license to City to use the Platform Provider software for the Project, and in consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Platform Provider an amount not to exceed FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000.00) as total compensation, to be paid to Platform Provider as follows:

4.1.1 TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) shall be payable to Platform Provider upon execution of this Agreement and delivery of the Platform.

4.1.2 TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) shall be payable to Platform Provider upon the satisfactory performance of the deliverables set forth in Attachment "A", Viridis Project Plan, as determined by Director's sole discretion.

- 4.2 Platform Provider shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Economic Development Department, P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.3 No additional fees or expenses of Platform Provider shall be charged by Platform Provider to Program Administrator nor be payable by Program Administrator. The parties hereby agree that all compensable expenses of Platform Provider have been provided for in the total payment to Platform Provider as specified in section 4.1 above. Total payments to Platform Provider cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance thereafter.
- 4.4 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Platform Provider following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Platform Provider, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Program Administrator pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Program Administrator.
- 5.2 Platform Provider understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

- 6.1 Platform Provider, and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Platform Provider shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided

hereunder, Platform Provider shall retain the records until the resolution of such litigation or other such questions. Platform Provider acknowledge and agree that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Platform Provider to return the documents to City at Platform Provider's expense prior to or at the conclusion of the retention period. In such event, Platform Provider may retain a copy of the documents at its sole cost and expense.

- 6.3 Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City is a municipal corporation of the State of Texas and is subject to the Public Information Act; however, in the event the City receives an open records request pursuant to the Public Information Act for information that is the subject of this Agreement, the City agrees to make the argument with the Attorney General for withholding any third party Confidential or Proprietary Information and inform Platform Provider of the demand for disclosure within ten (10) business days of receiving such request, prior to disclosing any Confidential or Proprietary Information to the requestor, to enable Disclosing Party, if it chooses, to contest the request.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon thirty (30) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
 - 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
 - 7.3.3 Failure to meet any of the conditions as set forth in Section 3.1.
- 7.4 Defaults With Opportunity for Cure. Should Platform Provider default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. Program Administrator shall deliver written notice of said default specifying such matter(s) in default. Platform Provider shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Platform Provider fails to cure the default within such 30 day cure period, Program Administrator shall have the right, without further notice, to terminate this Agreement in whole or in part as Program Administrator deems appropriate, and to contract with another consultant to complete the work required in this Agreement. Program Administrator shall also have the right to offset the cost of said new Agreement with a new Platform

Provider against Platform Provider's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
 - 7.4.2 Bankruptcy or selling substantially all of company's assets;
 - 7.4.3 Failure by Platform Provider to fix any software issues in a timely matter, timeliness being determined solely by City;
 - 7.4.4 Failure by Platform Provider to allow or assist with requests from City for purposes of administering and managing this Project;
 - 7.4.5 Failing to perform or failing to comply with any covenant herein required; or
 - 7.4.6 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Platform Provider shall effect an orderly transfer to Program Administrator or to such person(s) or firm(s) as the Program Administrator may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, digital reports, and any other materials or information produced as a result of or pertaining to the deliverables rendered by Platform Provider, or provided to Program Administrator, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Platform Provider in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at or Platform Provider's sole cost and expense. Payment of compensation due or to become due to Platform Provider is conditioned upon delivery of all such documents, if requested by City.
- 7.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, Platform Provider shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Platform Provider to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Platform Provider of any and all right or claims to collect moneys that Platform Provider may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Platform Provider and Program Administrator shall cease all operations of work being performed by Platform Provider or Program Administrator or any of their respective subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Platform Provider for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Economic Development Department
Attn: Rene Dominguez
100 W. Houston, Ste. 1900
San Antonio, TX 78205

If intended for Platform Provider, to:

Viridis Learning, Inc
Attn: _____
600 Congress Ave.
Austin, TX 78701

IX. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, Platform Provider understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Platform Provider shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Economic Development Department, which shall be clearly labeled "SAAS Workforce Development Tracking Platform" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Economic Development Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 Platform Provider's financial integrity is of interest to the City; therefore, subject to Platform Provider's right to maintain reasonable deductibles in such amounts as are approved by the City, Platform Provider shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Platform Provider's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. h. Explosion, collapse, underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

- 10.4 Platform Provider agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Platform Provider herein, and provide a certificate of insurance and endorsement that names the Platform Provider and the City as additional insureds. Platform Provider shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Platform Provider shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Platform Provider shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 10.6 Platform Provider agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Platform Provider shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Platform Provider's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required

insurance shall constitute a material breach of this Agreement.

- 10.8 In addition to any other remedies the City may have upon Platform Provider's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Platform Provider to stop work hereunder, and/or withhold any payment(s) which become due to Platform Provider hereunder until Platform Provider demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Platform Provider may be held responsible for payments of damages to persons or property resulting from Platform Provider's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.11 Platform Provider and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

- 11.1 **PLATFORM PROVIDER covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to PLATFORM PROVIDER'S activities under this Agreement, including any acts or omissions of PLATFORM PROVIDER, any agent, officer, director, representative, employee, Platform Provider or subcontractor of PLATFORM PROVIDER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PLATFORM PROVIDER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. PLATFORM PROVIDER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or PLATFORM PROVIDER known to PLATFORM PROVIDER related to or arising out of PLATFORM PROVIDER's activities under this AGREEMENT and shall see to the investigation and

defense of such claim or demand at PLATFORM PROVIDER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving PLATFORM PROVIDER of any of its obligations under this paragraph.

- 11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by PLATFORM PROVIDER in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. PLATFORM PROVIDER shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If PLATFORM PROVIDER fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and PLATFORM PROVIDER shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of PLATFORM PROVIDER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for PLATFORM PROVIDER or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Program Administrator and Platform Provider shall supply qualified personnel as may be necessary to complete the work to be performed under this Program Administrator, its employees or its subcontractors shall perform all necessary administrative and managerial aspects of the Project.
- 12.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the Program Administrator, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Platform Provider. Program Administrator shall in no event be obligated to any third party, including any subcontractor of Platform Provider, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City Council.
- 12.3 Except as otherwise stated herein, Platform Provider may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the written consent of City Council, as evidence by passage of an ordinance. As a condition of such consent, if such consent is granted, Platform Provider shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Party assignee, transferee or subcontractor.
- 12.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Platform Provider assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and

interest of Platform Provider shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Platform Provider shall in no event release Platform Provider from any obligation under the terms of this Agreement, nor shall it relieve or release the Platform Provider from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Platform Provider covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Platform Provider shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Platform Providers; that the doctrine of “respondeat superior” shall not apply as between City and Platform Provider, its officers, agents, employees, contractors, subcontractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between the City and Platform Provider. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Platform Provider under this Agreement.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

14.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Platform Provider represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City’s Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Platform Provider shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City’s Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Platform Provider’s certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Platform Provider shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

XV. CONFLICT OF INTEREST

15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, Platform Provider warrant and certify, and this Agreement is made in reliance thereon, that by contracting with the City, Platform Provider does not cause a City employee or officer to have a prohibited financial interest in the Contract. Platform Provider further warrant and certify that they have tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Platform Provider. Director or his or her designee shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Platform Provider warrants and certifies that Platform Provider and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets

all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Platform Provider shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Parties of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE & LEGAL FEES

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXII. LEGAL AUTHORITY

The signer of this Agreement for each Party represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the Party and to bind each Party to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

- A. Viridis Project Plan
- B. Viridis Licensing Agreement
- C. Viridis Security Plan

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.
- 27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a

wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Platform Provider hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Platform Provider's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

PLATFORM PROVIDER
Viridis

(Signature)

(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: _____
Title: _____
Date: _____

Approved as to Form:

Assistant City Attorney