

AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
APPLEDORE
FOR
OUTREACH GRID SERVICES

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Software as a Service Agreement (this “**Agreement**”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (the “**City**”), and Appledore, Inc., a Delaware Corporation (“**Appledore**”), 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. TERM

- 1.1 Original Term. This Agreement begins upon the effective date of the ordinance awarding the contract and ends on September 30, 2021 (the “**Term**”), unless terminated earlier in accordance with the provisions of this Agreement.
- 1.2 Renewal. At the City’s option, this Agreement may be renewed under the same terms and conditions for four (4) additional one (1) year periods. Renewals shall be in writing and signed by the City’s Finance Department Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.
- 1.3 Temporary Short Term Extensions. The City shall have the right to extend this Agreement under the same terms and conditions beyond the original Term, on a month to month basis, not to exceed three months. Said month to month extensions shall be in writing, signed by the City’s Department of Human Services Director (“**Director**”), and shall not require City Council approval, subject to and contingent upon appropriation of funding therefore.

II. CONTRACT DOCUMENTS

- 2.1 The term “**Contract Documents**” means the documents, which contain the agreements of the Parties with respect to this transaction. The Contract Documents shall consist of this Agreement, the Outreach Grid Services Order Form (**Attachment A**), the Price Schedule (**Attachment B**), and the City of San Antonio Data Security Policy (**Attachment C**), all of which are attached hereto and are incorporated into this Agreement by this reference.
- 2.2 Order of Precedence. In the event of any conflict or inconsistency among the Contract Documents, said conflict or inconsistency shall be resolved by giving precedence to the documents in the following order:
- (a) This Agreement;
 - (b) Outreach Grid Services Order Form and Scope of Work (**Attachment A**);
 - (c) Price Schedule (**Attachment B**);
 - (d) The City of San Antonio Data Security Policy (**Attachment C**); and
 - (e) Certification Regarding Lobbying (**Attachment D**).

III. SCOPE OF SERVICES

- 3.1 Appledore agrees to provide the services described in the Outreach Grid Services Order Form and Scope of Work, attached hereto and incorporated herein for all purposes as **Attachment A**.
- 3.2 Work performed in accordance with Attachment A as determined solely by Director will be considered work performed to the satisfaction of Director. All work performed by Appledore hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding, and conclusive on all Parties hereto. The City shall be under no obligation to pay for any work performed by Appledore, which is not satisfactory to Director. The City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Appledore’s work not be satisfactory to Director; however, the City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should the City elect not to terminate. The City shall notify Appledore in writing of any decision to withhold payment. Should the 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 APPLIEDORE

- 4.1 In consideration of Appledore’s performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement,

the City agrees to pay Appledore the fees set forth in the Price Schedule, attached hereto and incorporated herein for all purposes as **Attachment B**.

- 4.2 Approved Rates. City and Appledore have negotiated User and Agency Fees for all services provided pursuant to this Agreement. Appledore shall invoice City only the individual User and Agency Fee amounts for Users and Agencies provided. For the Term of this Agreement, including any extension or renewal hereof, no User Fee shall exceed \$85.00 per month and no Agency Fee shall exceed a one-time fee of \$100.00 per Agency without prior written authorization. Additions of Users and/or Agencies require written notification to and approval by the City prior to the provisioning of such Users and/or Agencies. Such written notification shall include the User and/or Agency Fee. Approved User Fees and Agency Fees shall be kept on file at the Department of Human Services. If the City adds 34 or more additional Users, the User Fees may not exceed \$80.00 per User and the yearly cost will adjust accordingly.
- 4.3 Appledore shall submit invoices to the City, in a form acceptable to the City, which the City shall pay within thirty (30) days of receipt and approval by Director. Appledore shall submit invoices to:
- (a) City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Department of Human Services, P.O. Box 839966, San Antonio, Texas 78283-3966; or
 - (b) electronically to the following e-mail address:

accounts.payable@sanantonio.gov.
- Invoices submitted electronically to the e-mail address above must be in separate .pdf format file. Multiple invoices cannot be submitted in a single .pdf file; however, Appledore may submit multiple, separate invoice files in a single e-mail. Any required documentation in support of the invoice should be compiled directly behind the invoice in the same .pdf file. Each electronically submitted file must have a unique identifying name that is not the same as any other file name.
- 4.4 Final acceptance of work products and services require written approval by the City. The approving official shall be Director. Payment will be made to Appledore following written approval of the final work products and services by Director. The City shall not be obligated or liable under this Agreement to any party, other than Appledore, for the payment of any monies or the provision of any goods or services.
- 4.5 No additional fees or expenses of Appledore shall be charged by Appledore nor be payable by the City. The Parties hereby agree that all compensable expenses of Appledore have been provided for in the total payment to Appledore as specified in Section 4.1 above. Total payments to Appledore cannot exceed that amount set forth in Section 4.1 above.

V. OWNERSHIP OF DOCUMENTS/INTELLECTUAL PROPERTY

- 5.1 Any and all writings, documents, or information in whatsoever form and character produced by Appledore pursuant to the provisions of this Agreement shall be provided to the City under an irrevocable, non-exclusive, royalty-free, perpetual license, to be used within the City of San Antonio, Bexar County, Texas (to the extent of the services being provided by the software). Appledore may provide services similar to the services it is providing to the City to other customers, including but not limited to other cities, municipalities, and government entities.
- 5.2 If this Agreement is terminated because of a breach by Appledore, including but not limited to Appledore ceasing business operations, the foregoing license shall survive the termination of this Agreement and the City shall be permitted to continue to utilize writings, documents, or information in whatsoever form and character, provided that the City is not in breach of any material provision of this Agreement and its actions or inactions did not contribute to Appledore's breach or termination of this Agreement.
- 5.3 Nothing herein shall be construed to grant any right or license to Appledore in or to any material provided to Appledore hereunder by the City or City residents, including but not limited to any user or resident data, other than the right to use such material solely on behalf of the City in accordance with the terms hereof. All of the foregoing materials, including but not limited to any and all copyrights, trademarks, service marks, and trade names related thereto, are and shall remain the property of the City. The City shall own all right, title, and interest in and to the City's data, as well as any data that is derived from the City's data and provided to the City as part of the services provided hereunder.
- 5.4 Appledore agrees to abide by the following regarding intellectual property rights:
- 5.4.1 Appledore shall pay all royalties and licensing fees. Appledore shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Appledore has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.
- 5.4.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, Appledore will immediately:
- Obtain, at Appledore's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the

programs and hardware or any other intellectual property as the case may be, or

- Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and
- Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

5.4.3 Appledore further agrees to:

- Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement,
- Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- Appledore is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Appledore agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
- The software or the equipment is used by the City in the form, state, or condition as delivered by Appledore or as modified without the permission of Appledore, so long as such modification is not the source of the infringement claim,
- The liability claimed shall not have arisen out of the City's negligent act or omission, and
- The City promptly provide Appledore with written notice within fifteen (15) days following the formal assertion of any claim with respect to which the City asserts that Appledore assumes responsibility under this Section.

5.5 Undisclosed Features. Appledore warrants that the code and software provided to the City of San Antonio under this Agreement does not contain any undisclosed features or functions that would impair or might impair the City's use of the equipment, code, or

software. Specifically, but without limiting the previous representation, Appledore warrants there is no "Trojan Horse," lock, "time bomb," backdoor or similar routine. This Agreement shall not now nor will it hereafter be subject to the self-help provisions of the Uniform Computer Information Transactions Act or any other law. Appledore specifically disclaims any unilateral self-help remedies.

VI. RECORDS RETENTION

- 6.1 Appledore 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 the 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 the City and any of its authorized representatives.
- 6.2 Appledore 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, Appledore shall retain the records until the resolution of such litigation or other such questions. Appledore acknowledges and agrees that the City shall have access to any and all such documents at any and all times, as deemed necessary by the City, during said retention period. The City may, at its election, require Appledore to return the documents to the City at Appledore's expense prior to or at the conclusion of the retention period. In such event, Appledore may retain a copy of the documents at its sole cost and expense.
- 6.3 Appledore shall notify the City, immediately, in the event Appledore receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Appledore understands and agrees that the City will process and handle all such requests.

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 I. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by either party without cause upon fifteen (15) 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, the City may terminate this Agreement as of the

date provided in the notice, in whole or in part, upon the occurrence of one 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 the City.

7.4 Defaults With Opportunity for Cure. Should Appledore 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. The City shall deliver written notice of said default specifying such matter(s) in default. Appledore shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Appledore fails to cure the default within such thirty (30) day cure period, the City shall have the right, without further notice, to terminate this Agreement in whole or in part as the City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. The City shall also have the right to offset the cost of said new Agreement with a new consultant against Appledore's future or unpaid invoice(s), subject to the duty on the part of the 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 IX. Non-Discrimination;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required; or

7.4.4 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, Appledore shall effect an orderly transfer to the City or to such person(s) or firm(s) as the City may designate, at no additional cost to the City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Appledore, or provided to Appledore, hereunder, regardless of storage medium, if so requested by the City, or shall otherwise be retained by Appledore in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by the City and shall be completed at Appledore's sole cost and expense. Payment of compensation due or to

become due to Appledore is conditioned upon delivery of all such documents, if requested by the City.

- 7.7 City shall pay Appledore for conforming goods delivered and services provided to the City, offset by any amounts due and owing from Appledore to City. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Appledore shall submit to the City its claims, in detail, for the monies owed by the City for services performed under this Agreement through the effective date of termination. Failure by Appledore to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of the City and constitute a **Waiver** by Appledore of any and all right or claims to collect moneys that Appledore 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, Appledore shall cease all operations of work being performed by Appledore or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall the City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of the City's remedies, nor shall such termination limit, in any way, at law or at equity, the City's right to seek damages from or otherwise pursue Appledore for any default hereunder or other action.

VIII. NOTICE

- 8.1 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 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 the City, to:

City of San Antonio
Attn: Morjorie White Department of
Human Services
P.O. Box 839966
San Antonio, TX 78283 -9966

If intended for Appledore, to:

Appledore, Inc. c/o Industrious
Attn: Tiffany Pang
3333 Michelson Drive
Suite 300
Irvine, CA 92612

- 8.2 Change of Address. Notice of change of address by any party must be made in writing and mailed to the other Parties within fifteen (15) business days of such change. All invoices, notices, requests, or consents under this Agreement shall be (a) in writing, (b)

delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the invoice, notice, request, or consent shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the party entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

IX. NON-DISCRIMINATION

- 9.1 City Nondiscrimination Policy. As a party to this contract, Appledore 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.
- 9.2 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, Appledore 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, Appledore 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. Appledore'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. Appledore shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Appledore shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance

to the City of San Antonio Office of Innovation, which shall be clearly labeled “*Outreach Grid Services*” 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 of San Antonio’s Office of Innovation. 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 the City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk.

10.3 Appledore’s financial integrity is of interest to the City; therefore, subject to Appledore’s right to maintain reasonable deductibles in such amounts as are approved by the City, Appledore shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Appledore’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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability –[Technology Errors and Omissions] (Claims-made basis) To be maintained and in effect for no less than two years subsequent	\$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

to the completion of the professional service.	professional services.
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- 10.4 Appledore agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Appledore herein, and provide a certificate of insurance and endorsement that names Appledore and the City as additional insureds. Appledore 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 Agreement 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). Appledore shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the address provided below within ten (10) days of the requested change. Appledore shall pay any costs incurred resulting from said changes.

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

- 10.6 Appledore 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 the City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days

advance notice for nonpayment of premium.

- 10.7 Within 5 calendar days of a suspension, cancellation, or non-renewal of coverage, Appledore shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend Appledore'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 Appledore'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 Appledore to stop work hereunder, and/or withhold any payment(s) which become due to Appledore hereunder until Appledore demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Appledore may be held responsible for payments of damages to persons or property resulting from Appledore's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Appledore's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 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.
- 10.12 Appledore and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

- 11.1 **APPLEDORE 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 APPLEDORE'S activities under this Agreement, including any acts or omissions of APPLEDORE, any agent, officer, director, representative, employee, consultant, or subcontractor of APPLEDORE, 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 APPLIEDORE 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. APPLIEDORE shall advise the CITY in writing within twenty-four (24) hours of any claim or demand against the CITY or APPLIEDORE known to APPLIEDORE related to or arising out of APPLIEDORE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at APPLIEDORE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving APPLIEDORE of any of its obligations under this paragraph.
- 11.3 Defense Counsel. The City shall have the right to select or to approve defense counsel to be retained by APPLIEDORE in fulfilling its obligation hereunder to defend and indemnify the City, unless such right is expressly waived by the City in writing. APPLIEDORE shall retain City approved defense counsel within ten (10) business days of the City's written notice that the City is invoking its right to indemnification under this Agreement. If APPLIEDORE fails to retain Counsel within such time period, the City shall have the right to retain defense counsel on its own behalf, and APPLIEDORE shall be liable for all costs incurred by the City. The 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 APPLIEDORE, 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 APPLIEDORE or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Appledore shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Appledore. Appledore, its employees, or its subcontractors shall perform all necessary work.

- 12.2 Before utilizing any subcontractor to perform any part of the work or assigning work identified in this Agreement, Appledore shall seek written authorization from the Director, who shall have the sole discretion to approve or reject such a request. 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 City, 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 Appledore. The City shall in no event be obligated to any third party, including any subcontractor of Appledore, 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 the City.
- 12.3 Except as otherwise stated herein, Appledore 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 consent of the Director. As a condition of such consent, if such consent is granted, Appledore shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor, 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 Appledore assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, the City may, at its option, cancel this Agreement and all rights, titles, and interest of Appledore shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to the City under this Agreement. The violation of this provision by Appledore shall in no event release Appledore from any obligation under the terms of this Agreement, nor shall it relieve or release Appledore from the payment of any damages to the City, which the City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Appledore covenants and agrees that he or she is an independent contractor and not an officer, agent, servant, or employee of the City; that Appledore 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 consultants; that the doctrine of “respondeat superior” shall not apply as between the City and Appledore, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between the City and Appledore. 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 Appledore under this Agreement and that Appledore has no authority to bind the City.

XIV. CONFLICT OF INTEREST

14.1 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 §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% or more of the voting stock or shares of the entity, or (ii) 10% 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.

14.2 Pursuant to the Section 14.1 above, Appledore warrants and certifies, and this Agreement is made in reliance thereon, that none of the above listed individuals or entities is a party to this Agreement. Appledore further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XV. 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 the City and Appledore. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVI. 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.

XVII. LICENSES/CERTIFICATIONS

Appledore warrants and certifies that Appledore 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.

XVIII. COMPLIANCE

- 18.1 Appledore shall provide and perform all services required under this Agreement in compliance with all applicable federal, state, and local laws, rules, and regulations, including but not limited to the Sections below in this Article XVIII. Compliance.
- 18.2 Suspension and Debarment. This Agreement is a covered transaction for purposes of 2 CFR Part 1200. As such, Appledore is required to verify that neither Appledore, nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. Appledore is required to comply with 2 CFR 1200, Subpart C and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, Appledore certifies that:
- Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible, or voluntarily excluded from participation in any State or Federal Program; and
 - Appledore shall provide immediate written notice to the City if, at any time during the term of this Agreement, including any extension or renewal hereof, Appledore learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.
- 18.3 Clean Air Act & Federal Water Pollution Control Act. Appledore agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Appledore agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this Agreement and the appropriate EPA Regional Office. Appledore agrees to include these requirements in each subcontract to this contract, if any, exceeding \$150,000, financed in whole or in part with federal funds.

XIX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party 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 the City, such changes must be approved, as described in Article XV. 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.

XX. LAW APPLICABLE & LEGAL FEES

20.1 **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.**

20.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matter in question between City and Appledore arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

20.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXI. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

21.1 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.

21.2 **"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.

21.3 **"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.

- 21.4 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. The City's hereby relies on Company's verification. If found to be false, the City may terminate the contract for material breach.

XXII. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED

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. Appledore hereby certifies that it is not identified on such a list and that it will notify the City should it be placed on such a list while under contract with the City. The City hereby relies on Appledore's certification. If found to be false, or if Appledore is identified on such list during the course of its contract with the City, the City may terminate this Agreement for material breach.

XXIII. LEGAL AUTHORITY

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

XXIV. 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.

XXV. 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.

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 XV. Amendments.

[Signatures on Next Page]

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

CITY OF SAN ANTONIO

APPLEDORE, INC.

(Signature)

(Signature)



Printed Name: _____

Printed Name: **Tiffany Pang**

Title: _____

Title: **Chief Executive Officer**

Date: _____

Date: **10/20/2020**

Approved as to Form:

Assistant City Attorney

Attachment A

Outreach Grid Services Order Form and Scope of Work

Roles and Responsibilities:

- Appledore
 - Keeping the platform is running properly
 - Identifying and addressing data quality concerns
 - Provide technical support as requested
 - Provide training as needed
 - Maintain HMIS User Agreements and Trainings and other requirements with HMIS.
 - Troubleshoot concerns as needed.
 - City of San Antonio
 - Serve as the Project Manager of the Outreach Grid Initiative
 - Recruitment of entities to participate in Outreach Grid
 - Ensure Outreach Grid is aligned with Community Goals to address homelessness.
 - Develop communication and policies for the Outreach Grid Platform
1. Appledore will provide the City with Outreach Grid, a coordinated entry platform to improve outreach coordination and collaboration across many entities assisting the unsheltered population and will interface with the local Homeless Management Information System (HMIS). Appledore will provide new features that are developed on Outreach Grid free of charge during the contract duration.
 2. Appledore will perform monthly data checks for data quality and consistency to identify and address any concerns. If and when errors in the data are found by Appledore, the user and City's point of contact will be notified via email, phone call, or other forms of communication within 48 hours of the identified error.
 3. Appledore will design and create a project roadmap for continuous improvements and customizations in discussion with the City and collaborative partners, which will also include up to 10 hours/week of product development work, customizations, bug fixing and reporting, discussing short and long term quarterly milestones. In the event that the number of users increase to 100, the hours of development time will increase to 20 hours/week. Additional development time can also be added for \$150/hour.
 4. Outreach Grid will ensure the software is compatible on Android and Apple mobile devices, in addition to other technological software to include but not be limited to computers, laptops, tablets and iPads.
 5. Appledore will develop an outreach strategy in discussion with the City, and collaborative partners.
 6. Appledore will provide ongoing user training sessions and materials, consultation to map

outreach processes into the Outreach Grid Software. Trainings will be in person and virtual as needed.

7. Appledore will maintain the integration into CaseWorthy HMIS for information access and transfer that was developed during the 2019 CivTechSA Residency Program. In case the HMIS software changes, Outreach Grid will create an integration with the new software as part of the weekly hours of product development mentioned in #3.
8. Appledore will also provide specifications to CaseWorthy and the HMIS team for an API integration.
9. Appledore will ensure federal and local data security and privacy practices are met in order as requested by the City of San Antonio, HMIS and in accordance to the laws and regulations pertaining to the data and access provided from Outreach Grid.
10. Appledore will provide documentation and technical support via chat, email, video conference, or phone. In person support will be made available as needed.
11. Any other additional development or work not included in the Outreach Grid Services Order Form or this Agreement will be discussed separately between Appledore and the City.
12. Appledore, in collaboration with the COSA, SARAH and HMIS, will identify the specific data points that will be collected to map into HMIS.
13. Appledore, in collaboration with COSA and partnering agencies, will develop a protocol and documentation for customer participation and compliance to ensure it's aligned with the current HMIS policies and procedures.
14. Appledore will maintain a regularly bi-weekly scheduled call between COSA, Outreach Grid and collaborating partners to discuss and troubleshoot concerns, provide updates, prioritize projects and address topics as deemed appropriate.
15. If the number of Outreach Grid users and participating agencies increase, the price of additional users will be at the current pricing schedule per user/per organization.
16. Outreach Grid will transmit data into HMIS on a daily basis. In the event of any concerns, Outreach Grid will inform the City and partnering agency within 24 hours.
17. Any excess funds not used will be reallocated to support travel support to San Antonio for Appledore Staff to provide in person trainings, meetings, and help with the implementation and sustainability of the program.
18. Appledore will provide technical support to Customer via phone, chat, and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Pacific time, with the exclusion of Federal Holidays ("Support Hours"). Customer may initiate a helpdesk ticket during or outside Support Hours. Company will use commercially reasonable efforts to respond to all Helpdesk tickets within three (3) business days.

Attachment B

Price Schedule

This Agreement will operate on a fiscal year time period (October-September). The initial term of this Agreement will be prorated based upon the effective date of the ordinance awarding the contract through September 30, 2021.

For the Term of this Agreement, including any extension or renewal hereof, User Fees may not exceed \$85.00 per month and Agency Fees may not exceed a one-time fee of \$100.00 per Agency without prior written authorization by the City. Additions of Users and/or Agencies require written notification to and approval by the City prior to the provisioning of such Users and/or Agencies. Such written notification shall include the User and/or Agency Fees. Approved User Fees and Agency Fees shall be kept on file at the City's Department of Human Services. The Parties intend year one to include 10 partnering agencies and 66 user licenses at the above mentioned rates. If the City adds 34 or more additional Users, the User Fees may not exceed \$80.00 per User and the yearly cost will adjust accordingly.

Attachment C

The City of San Antonio Data Security Policy

(attached as a separate document)

Attachment D

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, which can be found at <https://www.state.gov/documents/organization/149465.pdf>.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization: Appledore, Inc.

Street Address: 15375 Barranca Parkway, Ste. F-104

City, State, Zip: Irvine, CA 92618

Tiffany Pang
CERTIFIED BY:

Co-Founder/CEO
TITLE:

Signature:  Date: 10/20/2020