

SaaS Licensing Agreement



Attention: City of San Leandro

Prepared by: Jonathon Davis

August 25, 2022

EXHIBIT E

LICENSING AGREEMENT

This Licensing Agreement is by and between GovInvest, Inc. (“Company”), and Customer, City of San Leandro (“Customer”). This Agreement includes and incorporates each Summary of Services and Implementation, the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different or additional terms of any purchase order, confirmation or similar form, even if signed by the parties before or after the date hereof.

TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

- 1.1 Company shall provide the services identified in the Services section of each Summary of Services and Implementation (as defined below) attached to this Agreement (the “Services”)
- 1.2 Customer and Company shall mutually agree upon the Services to be performed by Company under this Agreement in a written summary of services and implementation (each, a “Summary of Services and Implementation”), in the form attached hereto as Exhibit A. Each Summary of Services and Implementation shall be attached to this Agreement as a sequentially numbered exhibit, and shall expressly be deemed incorporated into this Agreement and subject to all the terms and conditions set forth herein, except as otherwise set forth in the applicable Summary of Services and Implementation. In the event of any conflict between this Agreement and a Services and Implementation, such Services and Implementation shall govern.
- 1.3 The initial Summary of Services and Implementation is hereto referred to as Schedule 1.
- 1.4 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms attached hereto as Exhibit B. As part of the registration process, Customer will identify an administrative username and password for Customer’s account. Company reserves the right to refuse registration or cancel passwords it deems inappropriate.
- 1.5 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit C.

2. RESTRICTIONS AND RESPONSIBILITIES

- 2.1 Customer will not, directly or indirectly; reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to or used to provide the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted in writing by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
- 2.2 Further, Customer shall not export or re-export, either directly or indirectly, the Software or any copies thereof in such manner as to violate the export laws and regulations of the United States or

any other applicable jurisdiction in effect from time to time (including, without limitation, when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval). Without limiting the foregoing, Customer shall not permit any third parties to access or use the Services in violation of any United States export embargo, prohibition, or restriction.

- 2.3 We utilize Microsoft Power BI to provide you certain aspects of the Services. Customer is responsible for its compliance with the Microsoft Online Services Terms that apply to the Power BI product, available at <https://www.microsoft.com/en-us/licensing/product-licensing/products>.
- 2.4 Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorney's fees) in connection with any claim or action that arises from Customer's failure to comply with the terms of this Agreement or otherwise from Customer's use of Services. Although Company has no obligation to monitor Customer's use of the Services, Company may do so. Company reserves the right, in its sole discretion, to prohibit or suspend Customer's use of the Services at any time Company believes such use to be in violation of this Agreement or otherwise harmful to the Service.
- 2.5 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

- 3.1 One party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data ("Customer Data") provided by Customer to Company to enable the provision of the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third party any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, without any action by, or involvement of, the Receiving Party or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law. The Receiving Party acknowledges that in the event of a breach of Section 3.1 by the Receiving Party, substantial injury could result to the Disclosing Party and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Receiving Party engages in, or threatens to engage in, any act which violates Section 3.1, the Disclosing Party will be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of Section 3.1. The Disclosing Party will not be required to post a bond or other security in connection with the granting of any such relief.
- 3.2 Company shall own and retain all rights, title and interest in and to: (i) the Services and Software, together with all improvements, enhancements, modifications, changes, translations, compilation, and derivative works thereto, (ii) any software, applications, inventions or other technology

developed in connection with Implementation Services or support, (iii) any analytics generated through Customer's use of the Services, including but not limited to, any data, materials, information, and reports ("Analytics") and (iv) all intellectual property rights related to any of the foregoing. Company hereby grants Customer a non-exclusive, non-transferable and non-sublicensable license to access and use the Analytics.

- 3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to: (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, (ii) disclose such data solely in aggregate or other de-identified form in connection with its business, and (iii) disclose, share, license, or resell Analytics to third parties for consideration. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

- 4.1 Customer will pay Company the then applicable fees described in the applicable Summary of Services and Implementation in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth in the applicable Summary of Services and Implementation or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then current Renewal Term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 90 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.
- 4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice unless otherwise specified in the terms. Unpaid amounts may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.
- 4.3 Services may be provided outside the scope encompassed within the applicable "Summary of Services and Implementation". Said services may be subject to additional fees, which are set at \$600/hour for executive-level work, \$425/hour for FSA-level work, \$300/hour for ASA-level work, \$200/hour for analyst work, and reasonable travel expenses. Said services that are subject to additional fees will not be performed without explicit advance consent from Customer. Explicit written consent must be agreed upon in advance before payment for any additional fees.
- 4.4 Company will charge additional fees, which are set at \$250/hour, if, after the Effective Date, Customer: (i) changes its actuarial assumptions provided to Company, (ii) changes actuaries, (iii) provides Company with data that differs from the initial data provided by Customer to the Company, (iv) changes benefit structures, (v) adds additional tiers to its benefits plan, or (vi) merges with another plan. Explicit written consent must be agreed upon in advance before payment for any additional fees.
- 4.5 Reserved.
- 4.6 Reserved.
- 4.7 Reserved.

5. TERM AND TERMINATION

- 5.1 Subject to Section 5.3, this Agreement shall commence on the Effective Date and continue until September 6, 2023 referred to herein as the “Term.”
- 5.2 Each Summary of Services and Implementation shall be effective upon the date set forth in such Summary of Services and Implementation and continue until the end of the Term.
- 5.3 In addition to any other remedies it may have, either party may terminate this Agreement and/or any Summary of Services and Implementation upon thirty (30) days written notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement or such Summary of Services and Implementation. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement and the Summary of Services and Implementation which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner as expressed in Exhibit D. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company’s reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES, THE ANALYTICS, AND IMPLEMENTATION SERVICES ARE PROVIDED “AS IS” AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer’s use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer’s rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

8. **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. **MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may not transfer or assign any of its rights and obligations under this Agreement without Customer's prior written consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and all waivers and modifications in this Agreement must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

Attachment A
Summary of Services and Implementation

This Summary of Services and Implementation (this “SSI”) is entered into on this 6th day of September, 2022, between GovInvest, Inc. (“Company”), and the Customer listed below, pursuant to the terms of that certain Master Services Agreement (the “Agreement”), by and between Company and Customer.

Customer:

City of San Leandro
San Leandro City Hall
835 E 14th St.
San Leandro, CA 94577

Services:

Service Capacity: Use of the Labor Costing Module of the Total Liability Calculator (the “Service(s”).

Service Fees:

Labor Costing Module: \$20,000

Total: \$20,000

Term: 1 Year

Annual fee will increase by the greater of the US CPI or 5% each consecutive year, and payable in advance subject to the terms of Section 4 herein.

Implementation Services:

Company will use commercially reasonable efforts to provide Customer the services described in accordance with the terms herein, and Customer shall pay Company the Implementation Fee in accordance with the terms herein.

Labor Costing Module (One-Time): Waived

General:

The terms and conditions of this SSI are hereby incorporated into and made a part of the Agreement. All waivers and modifications in this SSI must be in a writing signed by both parties, except as otherwise provided in the Agreement.

Attachment B Service Level Terms

The Services shall be available 99% of the time, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third-party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than 12 hours, Company will credit Customer 1% of Service Fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 12 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.

Attachment C Support Terms

Company will provide Technical Support to Customer via both telephone and electronic mail on weekdays during the hours of 9:00 a.m. through 5:00 p.m. Pacific Standard Time, with the exclusion of Federal Holidays (“Support Hours”).

Customer may initiate a help desk ticket during Support Hours by calling 310-371-7106 or any time by emailing support@govinvest.com.

Company will use commercially reasonable efforts to respond to all help desk tickets within one (1) business day.

Attachment D Disclaimer of Software Analysis

Company will use census data, plan provisions, and actuarial assumptions provided by Customer and/or Customer's actuary to develop the software for Customer. Company will rely on this information without audit. Company does not set actuarial assumptions.

Company will provide software with financially sound projections and analysis, but does not guarantee compliance with actuarial standards for funding and accounting purposes under Government Accounting Standards Board or Generally Accepted Accounting Principles.

The software will not be prepared in accordance with the actuarial standards of practice or actuarial compliance guidelines as promulgated by the American Academy of Actuaries nor will outputs constitute a Statement of Actuarial Opinion. Software results are not suitable for financial reporting purposes.

While the software is tested against actuarial valuation results, the software results will not match, nor are intended to match actuarial valuation results.