CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Authorize the City Manager to Enter into a Contract with CI Security in the Amount of $145,000 for Managed Cyber Security Detection and Response Services
DEPARTMENT:	Administrative Services
PRESENTED BY:	Karen Mast, Information Technology Manager
ACTION:	____ Ordinance ____ Resolution _X_ Motion ____ Discussion ____ Public Hearing

PROBLEM/ISSUE STATEMENT:

In 2021, the City entered into an annual contract with Critical Informatics Inc., d/b/a CI Security, to provide network managed detection and response security services at an annual cost of $37,000. After completion of the first year, the City would like to continue and build upon the critical network security services offered by this service and enter into a new contract with CI security. The contract will be an auto-renewing annual contract for a total of five annual terms. The price for the initial term will be $26,720 with subsequent terms adjusted annually by the Consumer Price Index (CPI). The total value of the contract is anticipated not to exceed $145,000 and requires Council approval for the full value and term of the contract. The proposed contract with CI Security provides for cancellation of the contract with 60 days' notice.

Tonight, staff is seeking Council authorization for the City Manager to enter into this contract with CI Security.

RESOURCE/FINANCIAL IMPACT:

The total value of this up to five-year contract is not anticipated to exceed $145,000. Funding for these services is included in the Administrative Services Department, Information Technology Division operating budget.

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute an annual contract with CI Security with four automatic renewal options for a total contract term of five years in the amount of $145,000 for managed cyber security detection and response services.

Approved By: City Manager *DT*   City Attorney *MK*

BACKGROUND

In 2020, the City's insurance provider, Washington Cities Insurance Authority (WCIA), announced that it was reducing their Information Security Insurance (Cyber Insurance) coverage from $1M to $100,000. WCIA's published best practices include a strong recommendation that covered members have a managed detection and response security services consultant on contract. In the last few years, cities and agencies such as the Cities of Sammamish and Renton and the Washington State Auditors' Office have experienced data losses and ransomware events at the hands of sophisticated hackers.

Late in 2020, staff identified some threats to the City's network and recognized the need for additional assessment and monitoring support. Given the nature of the work, staff made an administrative selection of CI Security, and entered into a one-year contract at a cost of $37,000 to perform full-service risk assessment, detection, and response services to the City. CI Security is the leading vendor in the region for this service and focuses their efforts on offering services to public entities.

In 2021, staff worked with CI Security on the work identified above. Staff's ability to address many of the issues identified in this process has been limited due to IT staffing challenges in 2021. Furthermore, in late 2021, the City experienced a significant threat to the City's network. The work that had been done by CI Security allowed staff to identify this threat early before it was able to gain access to the City's network. CI Security contributed to the fast review of the possible threats and worked with City staff to isolate the network and evaluate the system to ensure its integrity. Due to the work of CI Security, the City was able to bring the network back online within 72 hours and reduce the risk to the City's data. In this instance, there was no data loss and minimal disruption to the City's services when compared with other jurisdictions that have been subject to cyber-attacks. This response was, in large part, due to CI Security's participation in the process.

DISCUSSION

Based on the City's first year of experience with CI Security, staff have confirmed the value of this service in ensuring the security of the City's network and responding to real and present network security threats. Staff would therefore like to continue and build upon the critical network security services provided by CI Security and enter into a new contract with them. This proposed contract (Scope of Work is included as Attachment A) would be an auto-renewing annual contract with a total of five annual terms. The price for the initial term would be $26,720 with subsequent terms adjusted annually by the Consumer Price Index (CPI). The total value of the contract is anticipated not to exceed $145,000 and requires Council approval for the full value and term of the contract. The proposed contract with CI Security provides for cancellation of the contract with 60 days' notice.

The proposed contract with CI Security provides for full-service detection, risk assessment and response, which includes the following services:

- Managed detection services,
- Regulatory compliance activities,
- Simulation of cyberattack to find and fix weaknesses,
- Incident preparedness with Shoreline staff,
- Active cyber incident response,
- Gap analysis and risk assessments, and
- Vulnerability scanning.

Because of CI Security's unique expertise and familiarity with the City's network, the City Manager has granted an RFP Waiver for the RFP requirements for this contract. While staff recommends authorizing the full five-year term of this contract, staff will continue to evaluate the effectiveness and need for this support annually and will terminate the contract should staff determine it is no longer necessary.

RESOURCE/FINANCIAL IMPACT

The total value of this up to five-year contract is not anticipated to exceed $145,000. Funding for these services is included in the Administrative Services Department, Information Technology Division operating budget.

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute an annual contract with CI Security with four automatic renewal options for a total contract term of five years in the amount of $145,000 for managed cyber security detection and response services.

ATTACHMENTS

Attachment A: CI Security Contract Scope of Work

CI SECURITY
MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("**MSA**"), together with any then-current Statement of Service ("**SOS**") between Customer and Critical Informatics, Inc., d/b/a CI Security ("**CI**") and the related exhibits, documentation and specifications CI may from time to time deliver or make available to Customer, govern and control the Services described in the ordering SOS. Capitalized terms not otherwise defined below shall have the meaning assigned to them in the SOS. Unless otherwise stated in a SOS, the terms of this MSA shall control any conflicting or inconsistent term in such SOS.

1. <u>Definitions.</u> Capitalized terms in this Agreement not otherwise defined have the meaning described below, for both singular and plural form.
    a. **"Agreement"** means this MSA, each SOS, and each exhibit that supplements the MSA and/or a SOS, as each such document may be amended from time to time.
    b. "**Appliance**" means the computer hardware unit integrated in Customer's Internet server stack as part of CI's provisioning process and included in, and required to enable activation and performance of, the CI Products.
    c. "**CI Assets**" means all computer hardware, software, networking tools and equipment, appliances and devices owned and operated by CI that are deployed or engaged in performance, in whole or part, of the Services, including any Appliance(s) provided to Customer in connection with the Services.
    d. **"CI Products"** means the CI Programs, Appliances, monitoring and response services, action plans, Reports, graphics, pictorial and functional representations, spreadsheets, presentations, analyses, processes, methods, procedures, concepts, know-how, techniques, practices, and all related manuals and Documentation, and modifications and improvements in respect to any of the foregoing, provided, delivered or made available to Customer by CI pursuant to a mutually executed SOS.
    e. **"CI Programs"** means the Critical Insight™ monitoring software programs and applications, designs, inventions, source code, tools, patches, updates and new versions to any of the foregoing, user ID's, user interfaces, tokens, passwords and portals licensed to Customer by CI as part of the CI Products but excludes third-party software and custom programs, if any, developed by CI for Customer.
    f. **"CI Services"** means the consulting services described in the ordering SOS and any other professional services that CI provides to Customer at Customer's request
    g. **"Customer Data"** means the in-bound and out-bound Internet borne data hosted on Customer's proprietary servers that is accessed and monitored by the CI Programs.
    h. **"Customer Infringement Exclusion"** means (i) Customer's use of the CI Programs except as permitted under this Agreement or Customer's combination of the CI Programs with any hardware, software or other materials either that are not provided by CI, or that could not reasonably have been anticipated to be used in combination with the CI Programs, in each case where absent such combination the CI Programs would be non-infringing, (ii) Customer's use of other than the most current release of the CI Programs that results in a claim or action for infringement that could have been avoided by use of the current release, provided that CI has supplied Customer with the most current release at no additional fee, or (iii) the provision by Customer to CI of materials, designs, know-how, software or other intellectual property with instructions to CI to use the same in connection with the CI Programs.
    i. "**Confidential Information**" means all information, data, and material one party hereto (the receiving party) obtains from the other party (the disclosing party) in connection with this Agreement; <u>provided</u>, that Confidential Information does not include information that: (i) was known to the receiving party without restriction before receipt from the disclosing party; (ii) is publicly available through no fault of the receiving party; (iii) is rightfully received by the receiving party from a third party without a duty of confidentiality; or (iv) is independently developed by the receiving party without reference to any Confidential Information of the disclosing party. Confidential Information also includes the terms of this Agreement, non-public personal or financial information relating to a party's employees, customers or contractors, all trade secrets, processes, proprietary data, information or documentation and any pricing or product information the disclosing party provides to the receiving party.
    j. **"Documentation"** means the Service descriptions, playbooks, instructions and protocols set forth in digital or hard copy format and provided or made available to Customer by CI**.**
    k. **"Effective Date"** means the date set forth in the signature block of this Agreement.
    l. **"Excused Downtime"** means any of the following: (i) force majeure events as defined in <u>Section 16.a.</u> hereof; (ii) data transmission failures outside the control of CI; and (iii) scheduled and emergency maintenance outages. Schedule maintenance is generally conducted between the hours of 8 p.m. Saturday and 8 a.m. Sunday, U.S. Pacific Time. Maintenance outages include, without limitation, installation of software updates and patches, service packs and routine server and application configuration changes. CI may schedule a non-routine maintenance outage on an as needed basis in its sole discretion and, except in instances of emergency maintenance, will use commercially reasonable efforts to notify Customer forty-eight (48) hours in advance of any such outage.
    m. **"Report"** means any written summary, analysis, finding, schedule or other, similar document prepared for Customer by CI as part of the Services specified in the ordering SOS.

n. "**Security Breach**" means the actual or suspected unauthorized third-party access to or use of the CI Assets that compromises the security or functionality of such assets or the confidentiality or integrity of any Customer Confidential Information stored thereon.

o. "**Services**" means the CI Products and CI Services together.

p. "**Services Term**" shall have the meaning set forth in Section 11.a. hereof.

q. "**Termination Event**" means with respect to either party, that party becomes the subject of a proceeding under the Bankruptcy Code, (i) seeking the appointment of a trustee, receiver or custodian or (ii) seeking the liquidation, winding-up, dissolution, reorganization or the like of such party, and the proceeding is not dismissed within 30 days of its commencement. If a party is subject to a Termination Event, such party shall promptly use commercially reasonable efforts to seek court authorization to pay all post-petition fees as an administrative expense.

r. "**Termination Fee**" means the pro-rated portion of the total Service fee specified in the ordering SOS applicable to the period remaining in the then current Services Term as of the effective date of termination.

2. **Services.** CI will provide Customer the Services set forth in one or more SOS's, which the parties may enter into from time to time, for the term of such SOS. Each SOS, and any related exhibits, will provide additional terms and conditions specific to the Services described in such SOS.

3. **Implementation & Performance.** At all times during the term of the SOS, Customer will provide to CI such access to Customer's technology infrastructure, including proprietary and licensed software and service programs and applications, and authorized personnel as specified in the SOS, the Documentation, and as CI may otherwise reasonably require to configure, integrate, enable, deliver and perform the Services set forth in the SOS. Customer will promptly obtain and provide to CI any required licenses, approvals, consents, permissions and credentials to Customer's facilities, systems, hardware, devices, software and services, as necessary for CI's timely access, performance and delivery of the Services. Customer acknowledges and agrees (a) that CI's performance and delivery of the Services are at all times conditioned upon (i) Customer providing timely, secure and unencumbered access to Customer's authorized personnel, facilities, equipment, systems, hardware, software, devices, network and data, and (ii) Customer's timely decision-making and granting of approvals or permissions; and (b) that CI shall not be in breach of its Services obligations hereunder, or liable for any resulting loss, damage or injury, arising from or in any way related to Customer's failure to timely satisfy and perform the conditions to CI's performance herein specified.

4. **CI Program License.** Upon mutual execution of an SOS for delivery of CI Program support, payment of the fees set forth in such SOS and for the duration of the term of such SOS, Customer will have a nonexclusive, non-assignable (except as provided in Section 16.e.), non-sublicensable, royalty-free, worldwide limited right to access and use the CI Programs solely for Customer's internal business operations and subject to the terms of this Agreement. Only Customer's authorized personnel may access and use the CI Programs, and Customer is solely responsible for compliance with this Agreement by users accessing the CI Programs with Customer's credentials.

5. **Ownership and Restrictions.** Customer retains all ownership and intellectual property rights in and to Customer Data and, subject to payment of applicable Service fees, any Reports prepared by CI for Customer. CI irrevocably assigns and transfers to Customer all of its worldwide right and title to, and interest in, the Reports, including all associated copyright, patent, trade secret, trademark and any other intellectual property or proprietary rights ("**Intellectual Property Rights**"). Additionally, CI grants to Customer a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, non-terminable, transferable, sublicensable license to all Intellectual Property Rights used in the creation of the Reports in order for Customer to exercise its rights in the Reports as contemplated by the applicable SOS. Without limiting the foregoing, (i) the Reports are "works made for hire" to the extent permitted by law, and (ii) CI will not assert, and otherwise waives, any "moral rights" in the Reports and CI hereby assigns all right, title and interest in such materials to Customer and agrees to reasonably assist Customer, at Customer's expense, to perfect such interest.

Except for Reports provided to Customer as part of the Services, CI retains all ownership and Intellectual Property Rights in and to the Services, and in furtherance thereof, Customer may not:

a. Remove or modify any proprietary marking or notice of CI's proprietary rights;

b. Make any aspect of the Services available in any manner to any third party for commercial use by such party, unless such access in expressly permitted in a SOS;

c. Modify, make derivative works from, disassemble, reverse engineer or reverse compile any part of the Services (the foregoing prohibition includes, without limitation, review of data structures, signatures or similar materials produced by the Services), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to CI;

d. Except for Reports and as required by applicable law, disclose to any third party the results of any Service without CI's prior written consent;

e. License, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timeshare or service bureau use, or otherwise commercially exploit or make the Services available to any third party other than as expressly authorized under this Agreement.

6. **Exclusions.** Customer is solely responsible for any hardware, software and networking tools, devices and appliances that are not provided by CI pursuant to this Agreement. Customer's responsibilities include, without limitation, Customer systems installation, maintenance and administrator activities, software and application licensing requirements, conditions and related financial commitments. Customer is solely responsible, at Customer's expense, for establishing, maintaining, operating and regulating Customer's access to the Internet, including without limitation, all computer hardware and software and properly

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configured and installed systems, browsers, modems, access lines and distributed networks necessary to enable, maintain, monitor and control Customer's Internet access.

7. **CI Assets.** During the term of this Agreement, CI shall observe and maintain data, technical and physical systems and asset security, personnel practices, and continuous monitoring and maintenance protocols in respect to each of the foregoing, all in design, manner and practice consistent with then prevailing industry standards, to: (a) protect and maintain the integrity of (i) all Customer Data and Customer Confidential Information in CI's possession, and (ii) CI Assets, from unauthorized use, alteration, access, disclosure, damage or destruction; (b) detect, protect against and prevent a Security Breach; and (c) provide CI employees and agents the appropriate training necessary to maintain the confidentiality, security and physical integrity of (i) Customer Data and Customer Confidential Information in CI's possession, (ii) Critical Informatics' Confidential Information, and (iii) the CI Assets. CI shall promptly notify Customer upon discovery of a confirmed Security Breach.

8. **CI Programs Service Levels.** CI will use commercially reasonable efforts to achieve the minimum availability of the CI Programs set forth in the Documentation, not including the Excused Downtime, and CI will monitor the availability of its systems on a 24/7 basis.

9. **Warranties, Disclaimers and Exclusive Remedies.** CI warrants (i) that the CI Products will be performed in all material respects in accordance with the Service Documentation referenced in the ordering SOS, (ii) that the CI Programs shall be maintained and available at the service levels specified in Section 8 hereof, and (iii) that the CI Services will be performed in a good and workmanlike manner substantially in accordance with industry standards. If the Services provided to Customer for any given calendar month during the Services Term are not performed as warranted, Customer must provide written notice to CI no later than five (5) business days after the last calendar day of such month or, if different, as provided in the ordering SOS.

CI DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT CI WILL CORRECT ALL SERVICE ERRORS. CUSTOMER ACKNOWLEDGES THAT CI DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING WITHOUT LIMITATION, THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO THE LIMITATION, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. IN ADDITION, DELIVERY OF THE CI SERVICES MAY BE CONTINGENT UPON THE ACCESS, SUPPORT AND COOPERATION OF CUSTOMER, WITHOUT WHICH SUCH SERVICES CANNOT BE PERFORMED. CI IS NOT RESPONSIBLE FOR, AND SPECIFICALLY DISCLAIMES LIABILITY FOR, ANY DELAYS, DELIVERY OR SERVICE FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS AND CONDITIONS.

FOR ANY BREACH OF THE ABOVE WARRANTIES, CI WILL REMIT A SERVICE FEE CREDIT TO CUSTOMER EQUAL TO TEN PERCENT (10%) OF (A), IF FOR CI PRODUCTS, THE NET MONTHLY FEES FOR THE APPLICABLE CI PRODUCTS FOR THE MONTH IN WHICH THE BREACH OCCURRED; AND (B), IF FOR CI SERVICES, THE NET SERVICE FEE SET FORTH IN THE ORDERING SOS. THE CREDIT WILL BE APPLIED AS FOLLOWS: (X) FOR CI PRODUCTS, AT CUSTOMER'S SOLE ELECTION, (i) AS AN OFFSET AGAINST ACCRUED BUT UNPAID FEES THEN OWED TO CI, IF ANY, (ii) AS A CREDIT TOWARD RENEWAL TERM FEES, IF ANY, NEXT COMING DUE, OR (iii) AS A REFUND PAYMENT BY CI; AND (Y) FOR CI SERVICES, ONLY AS AN OFFSET TOWARD ANY ACCRUED BUT UNPAID FEES OWED TO CI FOR THE RELATED SERVICES, AND APPLICATION OR REMITTANCE, AS THE CASE MAY BE, OF SUCH CREDIT WILL REPRESENT CUSTOMER'S EXCLUSIVE REMEDY, AND FULL SATISFACTION OF CI'S SOLE LIABILITY, FOR ALL WARRANTIES SPECIFIED IN THIS AGREEMENT.

EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICES, INCLUDING ANY REPORTS OR OTHER TANGIBLE OR INTANGIBLE ITEMS FURNISHED BY CI TO CUSTOMER, ARE PROVIDED ON AN "AS IS" BASIS WITH NO WARRANTIES OR REPRESENTATIONS OF ANY KIND. CI MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT THE SERVICES WILL RENDER CUSTOMER'S NETWORK AND SYSTEMS SAFE FROM MALICIOUS CODE, INTRUSIONS, OR OTHER SECURITY RISKS OR BREACHES OR THAT THE SERVICES WILL DETECT, REPORT OR NEUTRALIZE ALL SUCH MALICIOUS CODE, INTRUSIONS, SECURITY RISKS OR BREACHES. TO THE EXTENT NOT PROHIBITED BY LAW, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING FOR HARDWARE, SOFTWARE, SYSTEMS, NETWORKS, ENVIRONMENTS OR SERVICES OR FOR MERCHANTABILITY, NONINFRINGEMENT, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. **Indemnity.**
    a. **CI Infringement Indemnity.** Subject to Section 10.c., CI will defend Customer in any suit or cause of action, and indemnify and hold Customer harmless against, and pay on behalf of Customer, any damages awarded to third parties in any such suit or cause of action (including reasonable attorneys' fees awarded to such third parties and settlement amounts) alleging that the CI Programs as provided by CI and used in accordance with the terms of this Agreement infringe upon any United States patent, copyright, trade secret, or other proprietary right of a third party, *provided that*, the foregoing infringement indemnity will not apply and CI will not be liable for any damages assessed in any suit or cause of action to the extent resulting from a Customer Infringement Exclusion. If any CI Program is held or believed to infringe on any third party's intellectual property rights, CI may, in its sole discretion, (i) modify the CI Program to be non-infringing, (ii) obtain for Customer a license to continue using such CI Program, or (iii) if neither (i) nor (ii) are commercially practical, terminate this Agreement as to the infringing CI Program and return to

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Customer any unearned fees paid by Customer to CI in advance. This Section 10.a. states CI's entire liability and Customer's exclusive remedies for infringement of intellectual property rights of any kind.

b. **Customer Infringement Indemnity.** Subject to Section 10.c., Customer will defend CI in any suit or cause of action, and indemnify and hold CI harmless against, and pay on behalf of CI, any damages awarded to third parties in any such suit or cause of action (including reasonable attorneys' fees awarded to such third parties and settlement amounts) alleging infringement upon any United States patent, copyright, trade secret, or other proprietary right of a third party, to the extent that any such suit or cause of action results from an allegation of a Customer Infringement Exclusion. This Section 10.b. states Customer's entire liability and CI's exclusive remedies for infringement arising from a Customer Infringement Exclusion.

c. **Indemnity Conditions.** The indemnities set forth in this Agreement are conditioned upon the following: (i) the indemnitee ("**Indemnitee**") promptly notifies the indemnitor ("**Indemnitor**") in writing of such suit or cause of action, *provided*, that, any failure by Indemnitee to so promptly notify Indemnitor will not serve to reduce or forfeit an Indemnitee's rights hereunder unless and only to the extent such failure prejudices the rights and remedies of Indemnitor in respect to such suit or proceeding, (ii) the Indemnitor controls any negotiations or defense and the Indemnitee assists the Indemnitor as reasonably required by the Indemnitor, and (iii) the Indemnitee takes all reasonable steps to mitigate any potential damages that may result.

11. **Term and Termination.**

a. Services under this Agreement shall be provided for the initial Services Term set forth in the ordering SOS. Unless CI receives written notice from Customer at least sixty (60) days prior to the expiration of the then current Services Term, the SOS and related Services shall automatically renew for successive renewal Services Terms of one (1) year each. The initial term of the Services and any renewal term thereof are, herein, the "**Services Term**". Upon expiration or earlier termination of the Services Term, (i) if CI Services, all obligations of CI to perform and deliver, and all rights of Customer to receive, the CI Services, including the CI Services listed on the ordering SOS, shall end, (ii) if CI Products, all rights of Customer to access and use, and all obligations of CI to enable and provide, the CI Products, including the CI Products listed in the ordering SOS, shall end, and (iii) if no ordering SOS is then in effect, the term of this Agreement shall contemporaneously terminate or expire, as applicable.

b. If either party breaches a material term of the Agreement and fails to cure the breach within thirty (30) calendar days of delivery by the non-breaching party of written notice of breach and demand for cure thereof, then the breaching party is in default and the non-breaching party may without further notice to the breaching party immediately terminate the then current SOS. If CI terminates the SOS and related Services Term as specified in the immediately preceding sentence, Customer shall pay to CI all accrued but unpaid fees, if any, for the period prior to the effective date of termination, plus, as a non-exclusive remedy, an amount equal to the fees payable for the balance of the then current Services Term following the termination date as liquidated damages. In addition to the foregoing, any then current SOS will automatically terminate in the event of a Termination Event.

c. In addition, CI may immediately suspend the Services under the ordering SOS, including without limitation and if applicable, Customer's passwords, account and access to and use of the CI Products (i) if Customer fails to pay CI as required under this Agreement and fails to cure the non-payment within the first ten (10) calendar days of the above-noted 30-day cure period, or (ii) if Customer violates any provision of Sections 4, 5 or 13 hereof. Any suspension by CI of the Services under this Section 11.c. shall not excuse Customer from its continuing obligation to make payment(s) under the ordering SOS.

d. Sections 1, 5, 6, 9, 10 and 12 - 16 shall survive termination or expiration of this Agreement.

12. **Fees, Expenses, Taxes and Invoicing.**

a. Customer shall pay the fees for the Services ordered as set forth in the ordering SOS. All fees due under this Agreement are non-cancelable and payments thereof are non-refundable. Customer shall reimburse CI for actual and reasonable expenses incurred by CI in performing the Services (i) only on a pass-through basis without markup, and (ii) only if preapproved by Customer in the ordering SOS or similar writing. Fees and expenses, if any, listed in a SOS are exclusive of taxes. Customer is responsible for payment of any sales, value-added or similar taxes imposed by applicable law for the Services ordered by Customer, except for taxes based on CI's income.

b. Commencing the initial renewal Services Term (if any) and on an annual basis thereafter, all fees shall be subject to adjustment, in CI's sole reasonable discretion, in an amount not to exceed the greater of (i) the change in the U.S. Department of Labor CPI-All Urban Consumers for the immediately preceding annual period, and (ii) 5%.

c. Unless otherwise specified in the ordering SOS, (i) fees for CI Products are payable in advance on an annual basis, and (ii) fees for CI Services are payable in arrears on a monthly basis. In each instance payment is due within thirty (30) calendar days from the invoice date. Late payments shall accrue interest at the lesser of (i) 12% per annum, and (ii) the highest statutory rate, from the payment due date until paid in full. In the event of Customer's termination of a SOS for any reason prior to expiration of its stated Services Term, CI shall be entitled to receive, and Customer shall pay on demand, as an early termination fee and not a penalty, the Termination Fee. In the event Customer's past due account is submitted to an attorney or collections service for recovery, CI shall be entitled to recover the cost of collection, including reasonable attorneys' fees, in addition to all past due amounts. The rights and remedies set forth in this Section 12 are in addition to any other legal, equitable and contractual rights and remedies available to CI.

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13. **Confidentiality; Security.**
    a. The receiving party will use Confidential Information of the disclosing party solely for the purposes of performing its obligations under the Agreement. The receiving party will not disclose or make Confidential Information of the disclosing party available to any third party, except as specifically authorized by the disclosing party in writing. Upon the disclosing party's written request, the receiving party will promptly return to the disclosing party all of its Confidential Information, or certify in writing signed by an authorized representative that it has destroyed all such materials; *provided that*, in no event will the receiving party be obligated or required to amend, modify or destroy back up media and systems maintained in the ordinary course of business and designed in a manner to prevent the unauthorized access to or use of the data stored on such media and systems. Neither party will disclose to the other party or use in performance of its obligations hereunder any information, data, materials, or documents of a third party considered confidential or proprietary without the written authorization of such third party. Each party may disclose Confidential Information of the other party when compelled to do so by law if it provides, where legally permissible, reasonable prior notice to such other party. In furtherance of the foregoing, CI shall require each of its employees and agents providing any aspect of the Services hereunder to execute a confidentiality agreement incorporating confidentiality and non-use provisions consistent with, and no less restrictive than, the requirements of this Section 13.a.
    b. At all times during the Services Term, CI shall maintain reasonable and appropriate safeguards, security measures and protocols, which in no event shall be less effective than industry-standard safeguards, security measures and protocols, designed to (i) reasonably protect Customer's Confidential Information in CI's possession or control from unauthorized use, alteration, access or disclosure; and (ii) detect and prevent a breach of such safeguards, security measures and protocols by any unauthorized party.
    c. Notwithstanding the foregoing, CI may use the Customer's information for purposes other than the performance of the Services but only in an aggregated, anonymized form, such that Customer is not identified, and Customer will have no ownership interest in such aggregated, anonymized data.

14. **Limitation of Liability.** WITHOUT LIMITING ANY INDEMNIFICATION OBLIGATIONS OF A PARTY UNDER SECTION 10 OF THIS AGREEMENT OR (EXCEPT AS EXPRESSLY PROVIDED OTHERWISE BELOW) THE LIABILITY OF A PARTY FOR ANY BREACH OF ITS OBLIGATIONS UNDER SECTION 13 OF THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL (A) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES), WHETHER OR NOT SUCH PARTY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE AND (B) A PARTY'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR THE SERVICES DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY, EXCEPT THAT WITH REGARD TO LIABILITY OF A PARTY FOR BREACH OF ITS OBLIGATIONS UNDER SECTION 13 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S CUMULATIVE LIABILITY EXCEED THE LESSER OF (X) THE TOTAL CONTRACT PRICE OF THE APPLICABLE SOS, OR (Y) TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000). THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

15. **Export.** Export laws of the United States and any other related local laws and regulations may apply to the Services. Such laws govern Customer's use of the Services and any data provided by CI to Customer under this Agreement, and Customer shall comply with all such laws and regulations. No data, information, software programs and/or other materials resulting from the Services will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws.

16. **General.**
    a. **Force Majeure.** Neither party shall be liable to the other party or deemed to be in default for any delay or failure in performance of any obligation under the Agreement or interruption of any Service resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, acts of terrorism, acts of third parties over whom the party has no control, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, epidemics, pandemics, the elements or any other similar cause beyond the reasonable control of such party.
    b. **Audit.** CI may audit, at its own expense, Customer's user logs and related data for the purpose of determining Customer's compliance with the terms of this Agreement, including any then operative SOS. Audits shall be conducted by CI or its designee and shall be limited to records from the Effective Date of the ordering SOS to the month of the audit. CI shall be limited to one (1) audit per twelve (12) consecutive calendar month period. CI shall give ten (10) business days prior written notice of its intention to perform an audit. If any audit reveals non-compliance by Customer of any material term of the Agreement, then (i) Customer shall promptly initiate and prosecute to completion any remedial action required to cure such non-compliance, provided such non-compliance is reasonably subject to cure, and (ii) if the non-compliance is a variance of 5% or more in the total count of network users upon which Customer's then-current annual subscription fee is based, then CI may adjust the annual subscription fee specified in the ordering SOS for the period then remaining in the Services. In addition, if any audit

CI Security

reveals actual network users exceeding contracted network users by 5% or more, then Customer shall pay CI for all underpayments, plus interest, and shall reimburse CI for the reasonable cost of the audit.

c. **Notice.** Except as provided herein, any notice, approval or consent required or permitted hereunder shall be: (i) in writing; (ii) delivered by (A) hand or by overnight courier service, or (B) electronic mail to the respective addresses of the parties as set forth in the ordering SOS (or such other address a party may designate in writing); and (iii) effective upon actual delivery if by hand or courier service (or upon attempted delivery if receipt is refused), or upon electronic confirmation of successful delivery if by email.

d. **Integration; Waiver.** This Agreement, including any SOS, Documentation, exhibit, document or information or policy accessed by referenced URL, is the complete agreement for the Services ordered by Customer, and supersedes all prior or contemporaneous agreements, representations and understandings, written or oral, regarding such Services. If any provision of this Agreement shall be judicially determined to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable. A party's rights, obligations and restrictions hereunder may not be waived except in a writing signed or digitally accepted by an authorized representative of each party.

e. **Assignment.** No right or obligation under the Agreement (including the obligation to pay or right to receive monies due) may be assigned, delegated or subcontracted by a party without the prior written consent of the other party, and any purported assignment without such consent shall be void.

f. **Controlling Law.** This Agreement shall be construed in accordance with the laws of the State of Washington without regard to its principles of conflict of laws. The exclusive jurisdiction and venue of any action relating to this Agreement shall be the Superior Court of Washington for the County of King or the United States District Court for the Western District of Washington and each party hereto submits itself to the exclusive jurisdiction of such courts and waives any argument relating to the convenience of forum. The rights and remedies herein provided are in addition to those available to either party at law or in equity.

g. **Customer Reference.** CI may use Customer's name and logo to identify Customer as a CI customer on CI's website and in other marketing materials so long as Customer's name and logo do not appear with greater prominence than CI's other customers.

h. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. A faxed, .pdf or electronic signature shall have the same legally binding effect as an original signature.

i. **Modification.** This Agreement and any SOS may not be changed, altered or modified except in a writing signed by an authorized representative of each of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of _____ (the "**Effective Date**").

CRITICAL INFORMATICS, INC.   **THE CITY OF SHORELINE, WASHINGTON**

By: _____   **By:** _____

Print: _____   **Print:** _____

Title: _____   **Title:** _____