



## REPORT TO CITY COUNCIL

**Approved by:**

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Wendy Silva, Director of Human Resources

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Arnaldo Rodriguez, City Manager

**Council Meeting of:** April 1, 2020

**Agenda Number:** B-8

**SUBJECT:**

Consideration of Adopting a Resolution Approving a Master Services and License Agreement with Ebix, Inc., for Access to RiskEnvision Software and Authorizing the Mayor to Execute the Agreement

**RECOMMENDATION:**

It is recommended that the City Council (Council) adopt the resolution approving the agreement for RiskEnvision access with Ebix, Inc., and authorizing the Mayor to execute the agreement.

**SUMMARY:**

The risk management functions performed within the City's Human Resources (HR) Department include management of worker's compensation claims, tort liability claims and related litigation, and property damage recovery claims. The City currently uses different methods for tracking and maintaining information on each of these claim types. The proposed agreement for RiskEnvision software will allow consolidation of information into a single data source for record keeping and claims management.

**DISCUSSION:**

As part of its risk management functions, the HR Department acts as the central processing unit for the City's worker's compensation claims, tort liability claims and any related lawsuits, and property damage recovery claims. Currently, information related to management of these claims is tracked as follows:

- *Worker's Compensation Claims:* Staff utilizes a purchased database software product from Ebix, Inc., called CompWatch. The software was purchased outright many years ago and the City pays a \$440 per year ongoing product support fee. The City has been advised that ongoing support for the CompWatch program has ceased as the product has been

phased out of Ebix' offerings. The software is used to track lost time, modified duty days, upcoming medical appointments for which we expect reports to be received, general claim information and status, and data for Occupational Safety and Health Administration (OSHA) required reporting. It should be noted that of the three claim types noted, management of workers' compensation claims is the largest sector of claim types.

- *Tort Liability Claims and Litigation:* Staff utilizes an Access Database that was created as a class project by high school students in another city and brought to Madera by a former HR Director. The database has many broken elements that have stopped working over time and staff has been forced to supplement with Excel spreadsheet tracking of claims for some data points.
- *Property Damage Recovery Claims:* Staff utilizes Excel spreadsheets to track claims filed, total monies recovered, and total outstanding claims.

When the City moved to the Tyler Munis Enterprise Resource System (Munis), staff's intent was to utilize the Risk Management module offered within that system to consolidate all claim types into a central database. However, after reviewing the actual module, it was found to be deficient to track anything other than personal injury claims. Staff inquired of Tyler if the City could purchase a build-out of the Risk Management module so that it could be used for all types of claims; Tyler advised that this was not in line with their products strategy roadmap at this time. The City could implement the Tyler Munis Risk Management Module for personal injury claims only, however this will still maintain the inefficiencies created by multiple tracking systems and the Munis system does not have the capabilities of generating OSHA required reports.

In advising staff that the CompWatch program would no longer be supported, Ebix offered a hosted solution called RiskEnvision as an alternative. HR staff previewed a product demonstration and confirmed that RiskEnvision can be used to track, monitor, and manage all claim types that staff routinely works with in a single system. In addition, based on its historical use of the CompWatch program, staff is familiar with Ebix's level of customer support and customer service; they are very responsive when the City has experienced database issues in the past.

Ebix initially proposed implementation services of \$2,525 with ongoing monthly fees of \$340 for RiskEnvision. HR staff reviewed the fee components with Ebix staff and was able to negotiate an initial implementation fee of \$1,570 with ongoing monthly fees at \$220, or \$2,640 in annual fees.

In addition to discussions with Ebix, HR staff also researched other vendors. IndustrySafe was identified as a viable option that would provide a single platform for all claim type management. Staff reviewed a product demonstration and received a quote that included \$5,500 in implementation fees and \$12,600 in ongoing annual costs. Staff attempted to negotiate a lower rate and was able to obtain a revised quote that discounted implementation fees to \$0, but had ongoing annual maintenance costs of \$8,100. This still exceeded the Ebix quote.

Table 1. Summary of Quotes		
Vendor	Implementation Fees	Annual Maintenance Fees
Tyler Munis	Declined to Quote	
Ebix RiskEnvision	\$1,570	\$2,640
IndustrySafe	\$0	\$8,100

Staff is recommending entering into an agreement with Ebix for access to their RiskEnvision product. The software will be hosted by Ebix and data will be cloud-based.

**FINANCIAL IMPACT:**

The existing HR Department Fiscal Year 2019/20 budget includes \$440 for the ongoing maintenance of CompWatch. The Information Services budget includes the Tyler Munis software licensing fees, which include an ongoing fee of \$1,080 per year for the Risk Management Module, which staff has subsequently cancelled since the product did not meet the City’s needs. As such, these two expenses will be eliminated going forward. It is proposed that the RiskEnvision software be budgeted in Insurance/Risk Management within the Insurance Reserve Fund. There are adequate funds available in the adopted budget to cover the initial implementation fees for the current year and the monthly costs going forward.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The information contained herein is not addressed by the Vision Madera 2025 plan, nor is the information in conflict with that plan.

**ALTERNATIVES:**

Council could direct staff to review additional software packages.

**ATTACHMENTS:**

1. Resolution
  - a. Exhibit 1 to Resolution: Master Services and License Agreement with Ebix, Inc.
    - i. Attachment A – Commercial Terms
    - ii. Attachment B – Description of Features
    - iii. Attachment C – Description of Customer Support Services
    - iv. Attachment D – Service Level Warranty
    - v. Statement(s) of Work

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING A MASTER SERVICES AND LICENSE AGREEMENT BETWEEN THE CITY OF MADERA AND EBIX, INC., AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the City of Madera has a need to efficiently and effectively track and manage claims information related to worker's compensation, tort liability, litigation, and property damage recovery claims; and

WHEREAS, Ebix, Inc., offers risk management software products for claims management that meet the City's operational needs; and

WHEREAS, an agreement has been prepared between the City of Madera and Ebix, Inc., for implementation of and ongoing access to the RiskEnvision software offered by Ebix.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds, and orders as follows:

1. The above recitals are true and correct.
2. The Master Services and License Agreement between the City of Madera and Ebix, Inc., a copy of which is attached hereto as Exhibit 1, is approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City of Madera.
4. This resolution is effective immediately upon adoption.

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**EBIX, INC.**

**MASTER SERVICES AND LICENSE AGREEMENT**

**THIS MASTER SERVICES AND LICENSE AGREEMENT** between **Ebix, Inc.** ("Ebix") and **the City of Madera, CA** ("**Customer**") is dated as of the 1<sup>st</sup> day of April 2020.

**1. OVERVIEW.**

1.1 *General.* This Agreement states the terms and conditions by which Ebix will deliver and Customer will receive any or all of the services provided by Ebix, including software and application processing services via a proprietary worldwide web-enabled transaction system (the "System"), an integrated software product called RiskEnvision™ which resides on Ebix computers and computer workstations of Permitted Users (the "User Software"), data storage of Customer data and other professional services. The System is accessed by Customer through the User Software via Customer's Internet connection to Ebix's Data Center. The System, User Software, products and/or services to be provided hereunder are identified in the Commercial Terms attached hereto as Attachment A (the "Commercial Terms") (or subsequently submitted by Customer and signed by Ebix) and described in detail in the Description of Features attached hereto as Attachment B (the "Description of Features") and the Technical Specifications attached hereto as Attachment C (the "Technical Requirements"). The Commercial Terms, Description of Features and Technical Requirements (with any attached Statement(s) of Work) submitted, accepted and executed by both parties is hereby incorporated by reference into this Agreement. This Agreement is intended to cover any and all Services provided by Ebix to Customer.

1.2 *Definitions.*

(a) "Agreement" means this Master Services and License Agreement, including all attachments, exhibits and schedules hereto, as amended from time to time by written agreement of the parties.

(b) "Application Software" means the operating software for the System, which is maintained at the Ebix Data Center.

(c) "Confidential Information" means all business or technical information of the disclosing party that is not generally known, whether such information is disclosed orally or in writing. Confidential Information includes any software, documentation, algorithm, system architecture, device, compilation of information, method, technique or process, as

well as the terms and conditions of this Agreement. Confidential Information of Ebix includes, without limitation, the System, Application Software, User Software, Documentation and Materials. Confidential Information of Customer includes, without limitation, the Customer Content.

(d) "Customer Content" means any and all files, pages, data, works, information, reports and/or other material transferred by Customer and Permitted Users to Ebix in connection with this Agreement.

(e) "Data Center" means the data center and hosting facility established by Ebix or with a Ebix third party provider for operation of the System and storage of the Customer Content.

(f) "Documentation" means the user manuals, implementation manuals, and system administration manuals relating to the User Software, as well as updates of such manuals, in electronic, paper or other formats delivered to Customer in connection with this Agreement.

(g) "Initial Term" means the minimum term for which Ebix will provide the Services to Customer, as set forth in the Commercial Terms. Except as otherwise expressly provided in this Agreement, Ebix is obligated to provide and Customer is obligated to pay for the Services through its Initial Term and any Renewal Term.

(h) "Licensed Materials" means the User Software, Documentation and Materials.

(i) "Materials" means any and all reference materials, course materials, illustration software, guides, training or other materials provided by Ebix to Customer in connection with the User Software.

(j) "Permitted Users" mean those employees of Customer who have been authorized by Customer and Ebix to use the Licensed Materials.

(k) "Renewal Term" means any service term following the Initial Term, as specified in Section 2.6(b).

(l) "Rules and Regulations" means the Ebix general rules and regulations governing Customer's use of the Services as attached to this Agreement, without limitation, Customer's online conduct and use of the System and User Software.

(m) "Services" shall mean and include, without limitation, the System, Application Software, User Software, Hosting Services, Implementation Services, Information Services, and/or other products and services provided hereunder.

(n) "Service Commencement Date" means the date Ebix will begin providing the Services to Customer, as indicated in the Commercial Terms or a notice of Service commencement delivered by Ebix to Customer.

(o) "Service Level Warranty" is described and defined in Section 6.2 and Attachment D hereto entitled "Service Level Warranty."

(p) "Statement of Work" means a detailed description of additional services to be provided by Ebix to Customer, as agreed and executed by the parties.

## 2. SERVICES AND TERM.

2.1 *Delivery of Services.* By submitting a Commercial Terms, Customer agrees to take and pay for, and, by accepting the Commercial Terms, Ebix agrees to provide, the Services during the Initial Term and for any Renewal Term, as specified in Section 2.6(b) below.

2.2 *Description of Services.* Ebix agrees to perform and provide to Customer, subject to the terms and conditions of this Agreement, the Services consisting of: (i) a non-exclusive license to the User Software by the Permitted Users subject to the license provisions and restrictions in Section 3; (ii) non-exclusive electronic access to the System subject to the restrictions provided herein; (iii) non-exclusive electronic access to a digital information processing, transmission and storage system (the "Server") to use and store Customer Content for use with the System (the "Hosting Services"); (iv) the Customer support services as described in Attachment C; (v) assistance, if mutually agreed by the parties pursuant to Section 2.4 below, in implementing the Customer Content on the Server, providing installation or integration services, or enabling Customer access and ability to use the System (the "Implementation Services"); and (vi) other professional services, including providing reports, data or other information on a per-item or fixed-fee basis (the "Information Services").

2.3 *Hosting Services.* Ebix (or through its service provider) will host the Customer Content on the Server for use with the System on behalf of Customer. Fees for the Hosting Services will be charged as provided in the Commercial Terms. Ebix will provide Customer storage capacity on the Server and necessary system and file back-ups for the Customer Content. At all times during the term of this Agreement, Ebix will make commercially reasonable efforts to: (i) prevent any loss or damage to the Customer Content on the Server; and (ii) provide security, confidentiality and integrity of all Customer Content transmitted through or stored on the Server.

2.4 *Implementation Services.* Ebix shall perform the Implementation Services described in the Commercial Terms and/or a Statement of Work (if any). The Implementation Services will generally include reasonable assistance to the Customer in properly installing and configuring the User Software so as to work with the System. If Customer does not order Implementation Services, Customer will be solely responsible for installing and configuring the User Software.

2.5 *Information Services.* From time to time at the request of Customer through its use of the System, Ebix may provide reports, data, and other information obtained from third party providers. Customer agrees to pay the fees described in this Agreement or by the System for the use of the Information Services.

## 2.6 Term.

(a) *Term Commencement.* The term for the Services will commence on the Service Commencement Date. If such a date is not established, the Services will commence on the date the Customer begins receiving the Services. The Initial Term shall be for a one (1) year period.

(b) *Renewal Term(s).* Except as otherwise provided in the Commercial Terms or a separate renewal agreement signed by the parties, the Services will continue automatically for two (2) terms equal to one (1) year (a "Renewal Term") unless Customer notifies Ebix in writing at least sixty (60) days prior to the end of the Initial Term or a Renewal Term, as applicable, that it has elected to terminate the Services, in which case the Services shall terminate at the end of such term. Notwithstanding the foregoing, Ebix may change or increase the prices it charges Customer for any Service at any time after the Initial Term effective sixty (60) days after providing notice to Customer, subject to a maximum price increase of 10% in any one renewal term.

## 3. SYSTEM AND LICENSES.

3.1 *Right to Use System.* Subject to the provisions of this Agreement, including, without limitation, Customer's timely payment of fees hereunder, Customer has the limited, non-exclusive, nontransferable right to access, use and display the System and Application Software in conjunction with the User Software solely in performance of the functionality described in the Description of Features and Technical Requirements during the term of this Agreement, and for no other purpose other than using the Services. Subject to the terms of this Agreement, this right shall also extend to any upgrades or improvements in the System and Application Software that Ebix may provide or perform, provided that Ebix shall not be required to provide any upgrades or improvements.

3.2 *License to User Software.* Subject to the provisions of this Agreement, including, without limitation, Customer's timely payment of fees hereunder, Ebix grants to Customer a limited, non-exclusive, nontransferable license to access, use

and display the User Software in conjunction with the System solely in performance of the functionality described in the Description of Features and Technical Requirements during the term of this Agreement, and for no other purpose other than using the Services. Subject to the terms of this Agreement, this license shall also extend to any upgrades or improvements in the User Software that Ebix may provide or perform, provided that Ebix shall not be required to provide any upgrades or improvements.

3.3 *License to Documentation and Materials.* Except as otherwise provided herein, Ebix grants to Customer a limited non-exclusive, non-transferable license to use the Documentation and Materials, and any amendments and updates thereto, in conjunction with the System and User Software during the term of this Agreement, and for no other purpose other than using the Services.

3.4 *Restrictions on Licensed Materials and Application Software.* Access to the System, Licensed Materials and Application Software shall be granted only to Permitted Users after notification of the names of the Permitted Users is provided to Ebix and Ebix approves same. Ebix agrees that such approval will not be unreasonably withheld, conditioned or delayed. Customer shall not: (i) modify, sublicense, assign, sell, lease or otherwise transfer the Licensed Materials or Application Software; (ii) create a derivative work of the System, Licensed Materials or Application Software; (iii) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct or discover any source code or algorithms of the System, Application Software or User Software; (iv) use the System, Licensed Materials or Application Software in operating a service bureau or applications service provider; or (v) remove any product identification, copyright or other notices from the Licensed Materials. Customer may not copy the System, Application Software or User Software; provided, however, the Customer may make one copy of the system Application Software or user software for back-up purposes. Customer may copy the Documentation and Materials provided that any such copies retain Ebix's notices, including, without limitation the copyright and trademark notices, and notice of Ebix's ownership.

3.5 *Ownership.* Ebix retains all rights, title and interest in and to the System, Licensed Materials and Application Software in all forms and in all versions, copies and modifications thereto, including all worldwide rights to patents, copyrights, trademarks, trade secrets and all other intellectual property and proprietary rights. Other than the licenses and rights specifically granted hereunder, Customer will not acquire any right, title and interest whatsoever in and to the System, Licensed Materials or Application Software.

3.6 (a) *License and Ownership of Customer Content.* Customer grants to Ebix a non-exclusive, non-transferable and royalty-free license during the term of this Agreement to use, copy, display and transmit on and via the Internet, the Customer Content in connection with the Ebix Data Center solely as contemplated by this Agreement. Ebix may use the

Customer Content for internal statistical and benchmarking purposes only, so long as Ebix does not release any sensitive or identifying data contained in such Customer Content. The Customer Content and any modified versions of the Customer Content are the sole and exclusive property of Customer or its clients. Except as set forth herein, Ebix has no rights in or to the Customer Content.

(b) *Customer Privacy Policy.* Ebix agrees that it is familiar with and shall comply with the applicable privacy regulations of the Federal and State regulatory authorities. Further, Ebix recognizes the Customer's Privacy Policy and will take all necessary measures to ensure compliance with such Policy with respect to Customer Content. Ebix shall apply and abide by Customer's Privacy Policy in the handling of all Customer Content, which is "nonpublic personal information." Nonpublic personal information may include, but is not necessarily limited to, all financial and health information as defined by applicable law. Ebix's obligation to abide by Customer's Privacy Policy shall continue to apply as required by law to former policyholders, claimants, customers or clients of Customer, and even in the event of the termination of this Agreement. Ebix acknowledges that, except as permitted by law, Ebix may not disclose nonpublic personal information to anyone else unless it has provided any policyholder, claimant, customer, or client of Customer with a copy of its own privacy policy and the opportunity to opt-out of sharing any nonpublic personal information. Whenever it is necessary, in furtherance of this Agreement, to share nonpublic personal information with other persons, Ebix shall ensure that the third party also understands and abides by the privacy laws and regulations. In addition, Ebix understands and acknowledges that it must maintain the security of nonpublic personal information, however contained (paper records, electronic or otherwise) as may be required by Federal and State law or regulations.

3.7 *Source Code Escrow.* In the event that Ebix becomes subject to any bankruptcy, insolvency, liquidation or other similar proceedings which are not dismissed within ninety (90) days after commencement or any time said proceeding results in the interruption of service for more than 48 consecutive hours, then Customer shall have access and be granted a license to use the source code for the Application Software provided hereunder. Customer's access shall be through Ebix's escrow agent as appointed, from time to time, at Ebix's discretion and subject to the Agreement between Ebix and Agent. Ebix shall notify Customer of the Agent's name, address, phone number, and contact person upon the execution of this Agreement, and at any time thereafter and during the term of this Agreement, should Ebix appoint a replacement Agent.

#### 4. FEES AND PAYMENT TERMS.

4.1 *Fees and Expenses.* Customer will pay all fees due according to the prices listed in the Commercial Terms. The prices listed in the Commercial Terms will remain in effect

during the Initial Term indicated in the Commercial Terms and will continue thereafter, unless modified in accordance with Section 2.6(b). Customer also agrees to reimburse Ebix for actual out-of-pocket reasonable expenses incurred in providing Implementation Services to Customer; provided that (i) Customer has given its written consent for any such expenses, (ii) the expenses have been detailed in a form acceptable to Customer and (iii) Ebix submits supporting documentation to Customer.

4.2 *Payment Terms.* On the Service Commencement Date, Customer will be billed an amount equal to all non-recurring charges indicated in the Commercial Terms and the monthly recurring charges for the first month of the term. Monthly recurring charges for all other months will be billed in advance of the provision of Services. All other charges for Services received and expenses incurred during a month (e.g., Information Services) will be billed at the end of the month in which the Services were provided. Payment for all fees is due thirty (30) days after the date of each Ebix invoice. All payments will be made in the United States in U.S. dollars. In the event Customer disputes any portion of any invoice, Customer shall notify Ebix in writing within forty-five (45) days of the date of the invoice. Customer agrees that such dispute period is reasonable and hereby waives its right to dispute any amount if Ebix is not notified within such period. A dispute as to any portion of an invoice does not relieve Customer from timely payment of the undisputed portion.

4.3 *Late Payments.* Any payment not received within thirty (30) days of the invoice date will accrue interest at a rate of one-half percent (½%) per month, or the highest rate allowed by applicable law, whichever is lower. If Customer is delinquent in its payments under this Section, Ebix may, upon prior written notice to Customer, modify the payment terms to require full payment before the provision of all Services or require other assurances to secure Customer's payment obligations hereunder. Subject to the notice and opportunity to cure as provided in Section 12.1, Ebix shall have the right to terminate all of the Services provided under this Agreement for any default in payment if such default occurs for any reason other than a good faith dispute made pursuant to Section 4.2.

4.4 *Taxes.* All fees charged by Ebix for Services are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services, all of which Customer will be responsible for and will pay in full, except for taxes based on Ebix's income.

## 5. CONFIDENTIAL INFORMATION.

### 5.1 Confidential Information.

(a) *Nondisclosure of Confidential Information.* Each party hereto acknowledges that it will have access to certain Confidential Information of the other party. Each party hereto agrees that it will not use in any way, for its own benefit or the benefit of any third party, except as expressly permitted by, or

required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, in a manner at least as stringent as it takes to protect its own Confidential Information.

(b) *Exceptions.* Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

(c) *Period of Confidentiality Obligation.* The obligations of a receiving party under this Agreement with regard to Confidential Information of a disclosing party that constitutes a trade secret within the meaning of applicable law remain in effect for as long as such information remains a trade secret. The receiving party's obligations with regard to the disclosing party's Confidential Information that does not constitute a trade secret remain in effect during the term of this Agreement and for five (5) years after the expiration or termination for any reason. Upon request of the disclosing party, the receiving party will return or destroy any Confidential Information, including any copies and summaries or documents produced using the Confidential Information, and will, upon the request of the disclosing party, certify in writing that such materials have been destroyed.

(d) *Unauthorized Use or Disclosure.* Each party hereto will immediately give notice to the other party of any unauthorized use or disclosure of the other party's Confidential Information of which it becomes aware. Each party hereto agrees that its obligations provided in this Section are necessary and reasonable in order to protect the disclosing party and its business, and each party hereto expressly agrees that monetary damages would be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, each party hereto agrees and acknowledges that any violation or threatened violation will cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the



continuation of any such breach by the receiving party, without the necessity of proving actual damages.

## 6. EBIX REPRESENTATIONS AND WARRANTIES.

6.1 *General.* Ebix represents and warrants that (i) it has and will continue to have the legal right and authority to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of the Services to Customer will not violate any applicable U.S. laws or regulations.

(a) *Breach of Warranties.* In the event of any material breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Customer will have the right, in its sole reasonable discretion, to terminate this Agreement.

6.2 *Service Level Warranty.* Ebix will provide a Service Level Warranty in accordance with the terms and conditions set forth in Attachment D to this Agreement entitled "Service Level Warranty."

6.3 *No Other Warranty.* **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6 AND IN ATTACHMENT D, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. EBIX DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. DUE TO ITS RELIANCE ON THIRD PARTIES AND OTHER FACTORS BEYOND ITS CONTROL, EBIX DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.**

## 7. CUSTOMER OBLIGATIONS.

### 7.1 *Warranties of Customer.*

(a) *General.* Customer represents and warrants that (i) it has the legal right and authority, during the term of this Agreement, to place and use any Customer Content as contemplated under this Agreement; and (ii) the performance of its obligations and use of the Services (by Customer and its Permitted Users) will not violate any applicable laws or regulations.

(b) *Breach of Warranties.* In the event of any material breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Ebix will have the right, in its sole reasonable discretion, to suspend any related Services if deemed reasonably necessary by Ebix to prevent any harm to Ebix, its customers, service providers and/or their business. Ebix will provide ten (10) business days notice and opportunity to cure, depending on the nature of the breach, prior to any such suspension of Services.

7.2 *Compliance with Law and Rules and Regulations.* Customer agrees that it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply in all material respects, at all times with all applicable laws and regulations and the Rules and Regulations, as updated by Ebix (or its service providers or other third party providers) from time to time. The Rules and Regulations are incorporated herein and made a part hereof by this reference. Ebix may change the Rules and Regulations upon fifteen (15) days written notice to Customer. Customer agrees that it has received, read and understands the current version of the Rules and Regulations. The Rules and Regulations contain restrictions on Customer and Customer's users' online conduct (including prohibitions against unsolicited commercial email) and contain financial penalties for violations of such restrictions. Customer agrees to comply with such restrictions and, in the event of a failure to comply, Customer agrees to pay the financial penalties in accordance with the Rules and Regulations. Customer acknowledges that Ebix exercises no control whatsoever over the Customer Content and that it is the sole responsibility of Customer to ensure that the information it and its Permitted Users transmit and receive complies with all applicable laws and regulations and the Rules and Regulations.

7.3 *Restrictions on Use of Services.* Customer shall not, without the prior written consent of Ebix (which may be withheld in its sole discretion), resell the Services to any third parties or allow access to the System, Application Software or User Software by anyone other than Permitted Users.

7.4 *Customer Provided Equipment and Communications.* Customer shall provide and maintain computer workstation equipment and Internet communications as specified in the Technical Requirements on Attachment C.

## 8. LIMITATIONS ON REMEDIES AND LIABILITY.

8.1 *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* Ebix does not and cannot control the flow of data to or from Ebix' System, the Internet, and/or Customer's computer equipment. Such flow depends in large part on the performance of Internet services provided or controlled by third parties (including third party providers). At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet and/or the System (or portions thereof). Although Ebix will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Ebix cannot guarantee that such events will not occur. Accordingly, Ebix disclaims any and all liability resulting from or related to such third party acts, omissions, any force majeure conditions (as defined in Section 13.1) and all events and circumstances not within the control of Ebix.

8.2 *Damage to Customer Content.* Ebix assumes no liability for any damage to, or loss of, any Customer Content resulting from any cause other than the willful or negligent misconduct of Ebix or an omission of Ebix. To the extent

Ebix is liable for any damage to, or loss of, Customer Content for any such reason, such liability will be limited solely to the greater of the cost to restore the Customer Content or the fees paid by Customer to Ebix within the preceding twelve months.

**8.3 Internet and System Security.** Customer understands and agrees that use of or connection to telecommunications and data communications networks and the Internet may not be secure and that connection to and transmission of data and information over the Internet and such facilities provides the opportunity for unauthorized access to Customer's computer systems, networks, and any and all data and information stored therein. Information and data transmitted and received through the Internet or stored on any equipment through which Internet information is transmitted may not remain confidential and Ebix does not make any representation or warranty regarding the privacy, security, authenticity, and non-corruption or destruction of any information so stored or transmitted. Ebix shall not be responsible for any adverse consequence or loss whatsoever of Customer's (or its users') connection to or use of the Internet, System or Services (including, without limitation, loss of data or information), unless such adverse consequence is a result of Ebix's willful or negligent misconduct or an omission of Ebix, and Ebix shall not be responsible for any use by Customer or its users of the Internet connection in violation of any law, rule or regulation or any violation of the intellectual property rights of another. Use of any information transmitted or obtained by Customer using the Internet, User Software or the System is at Customer's own risk. Ebix specifically denies any responsibility for the accuracy or quality of information obtained through the Internet, its System and User Software, including as a result of failure of performance, error, omission, interruption, corruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction or unauthorized access to, alteration of, or use of information or facilities, or malfunctioning of the System, Internet or Data Center.

**8.4 Consequential Damages Waiver.** Except as otherwise provided in this agreement, In no event will either party be liable or responsible to the other for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, business interruption, loss of business, substitute products or systems, loss of technology, rights or services, loss of data, loss of Customer Content or interruption or loss of use of the Services, System, Application Software, User Software, Data Center or equipment, even if foreseeable and/or advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

**8.5 Basis of the Bargain; Failure of Essential Purpose.** The parties hereto acknowledge that Ebix has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties hereto. The parties hereto agree

that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

**8.6 Limitation Remedies and Damages.** The aggregate liability of Ebix to Customer for all Losses (as defined below) for any Actions (as defined below) arising out of or related to this Agreement for all claims of every kind and nature that arise or accrue, regardless of the form of action that imposes liability, whether in contract, indemnity, equity, negligence, intended conduct, tort or otherwise, will be limited to and will not exceed, in the aggregate, the greater of (i) the fees paid by Customer under this Agreement during the twelve (12) calendar months preceding the date of the event out of which the Losses arise, or (ii) \$100,000.

## 9. INDEMNIFICATION.

**9.1 Indemnification.** Each party hereto will indemnify, defend and hold the other harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") resulting from any claim, suit, action, or proceeding (each, an "Action") brought by any third party against the other or its affiliates alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or use of the Services (but excluding any infringement contributorily caused by the other party); (ii) personal injury caused by the negligence or willful misconduct of the other party; and (iii) any violation of or failure to comply with the Rules and Regulations. Ebix will have no liability to Customer if any claim of infringement is based solely upon the use of the Services in a manner other than as expressly permitted herein. Customer will have no liability to Ebix if any claim of infringement is based upon providing the Services in a manner other than as expressly permitted herein.

**9.2 Notice** Each party's indemnification obligations hereunder shall be subject to (i) receiving prompt written notice of the existence of any Action; (ii) being able to, at its option, control the defense of such Action; (iii) permitting the indemnified party to participate in the defense of any Action; and (iv) receiving full cooperation of the indemnified party in the defense thereof.

## 10. INSURANCE.

**10.1 Professional (E&O) Liability/Cyber Liability.** Ebix shall maintain Professional Liability, Technology Errors & Omissions Liability and Network Security & Privacy Liability insurance with limits of two million (\$2,000,000) per claim and in the aggregate. Ebix will list Client as an additional insured party under this insurance policy. Coverage shall include: (i) Failure to prevent unauthorized access to, use of or tampering with computer systems/networks, including denial of service, unless directly caused by a mechanical or electrical

failure, (ii) Unauthorized disclosure of personal or confidential information, (iii) liability arising out of professional errors and/or omissions resulting in the introduction of a computer virus or other malicious code causing damage to Customer's computer system, network or similar related property and the data, software and programs thereon, (iv) liability for intellectual property infringement claims and for indemnification and legal defense of any claims of intellectual property infringement, including infringement of copyright, or trade mark, brought against Client for the Ebix System, (v) government investigations and associated fines/penalties, if insurable by law, resulting from the alleged or actual disclosure of personal or confidential information or security breach, (vi) liability for Client's non-physical business interruption due to a security failure of an Ebix computer system, network, hardware or software or Ebix' professional services. The policy will have a retroactive date of no later than the effective date of this Agreement and coverage shall be maintained for an additional period of three (3) years following termination of the Agreement.

## 11. PERSONAL DATA

*11.1 Personal Data.* Notwithstanding any other provisions of this Agreement the following privacy and data protection provisions shall apply to this personal data.

(a) Ebix shall hold any Personal Data that it receives in confidence and in compliance with (i) Ebix's obligations under this Agreement and (ii) all laws regarding its use and access to such Personal data.

(b) Ebix agrees that it and its employee's shall not use any Personal Data for any purpose other than the fulfillment of the terms and conditions of this Agreement. Ebix shall not process or disseminate Personal Data to any third party or transfer Personal Data without the prior approval of Customer. Ebix shall be responsible for any failure of its employees to comply with the terms and conditions regarding Personal Data set forth in this Section 11.

(c) If Ebix has knowledge of any unauthorized disclosure of or access to Personal Data, Ebix shall:

- (i) Expediently report such unauthorized disclosure or access to Customer;
- (ii) Mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Ebix; and
- (iii) Cooperate with Customer in providing any notices regarding impermissible disclosures caused by such disclosure or access which Customer deems appropriate.

To the extent such unauthorized disclosure or access is attributable to a breach by Ebix or its employees of Ebix's obligations under this Agreement with respect to Personal Data, Ebix shall bear (a) the costs incurred by Ebix in complying with its legal obligations relating to such breach and (b) in addition to any other damages for which Ebix may be liable for under this Agreement, the following costs incurred by Customer in complying with its legal obligations relating to such breach, to the extent applicable, (1) the cost of

providing notice to affected individuals (2) the cost of providing such affected individuals with credit monitoring services for 12 months, (3) the cost of providing such affected individuals with \$50,000 of identity theft insurance, and (4) call center support for such affected individuals for 30 days.

## 12. TERMINATION.

*12.1 Termination for Cause.* Unless otherwise provided herein, either party hereto may terminate this Agreement if: (i) the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within ten (10) days after receipt of written notice from Ebix; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. Neither party hereto will be liable to the other for any termination or expiration of this Agreement

*12.2 Termination by Parties.* The Parties hereto may mutually agree to terminate this Agreement at any time.

*12.3 No Liability for Termination.* Except as expressly provided herein, neither party hereto will be liable to the other party for any termination or expiration of any Service or this Agreement in accordance with the terms hereof; provided, that Customer remains obligated to pay the fees and charges incurred hereunder.

*12.4 Effect of Termination.* Upon the effective date of termination of this Agreement:

(a) Ebix will immediately cease providing the Services;

(b) Any and all payment obligations of Customer under this Agreement for Service(s) provided through the date of termination will immediately become due;

(c) within thirty (30) days of such termination, each party hereto will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement; and

(d) Ebix shall provide a copy of the Customer Content to Customer in the format and on the media selected by Customer, in its reasonable discretion, within twenty (20) business days of such termination, however, in all cases subject to Section 12.5 below.

12.5 Survival. The following provisions will survive any expiration or termination of the Agreement: Sections 1.2, 3.4, 3.5, 3.6, 4 thru 11, 12.3, 12.4, 12.4 and 13.

### 13. MISCELLANEOUS PROVISIONS.

13.1 *Force Majeure*. Except for the obligation to make payments, neither party hereto will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including, without limitation, acts of war, acts of God, earthquake, fire, flood, explosion, embargo, riot, sabotage, labor shortage or dispute, any law, order, regulation, direction, action or request of governmental or regulator entity or agency, or any civil or military authority, emergency, transmission failures, telecommunications line breaks or outages, or failure of the Internet, provided that the delayed party: (a) gives the other party reasonably prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Ebix is unable to provide Service(s) for a period of thirty (30) consecutive days as a result of a continuing force majeure event, Customer may cancel the Service(s).

13.2 *Disaster Recovery*. Ebix shall provide for standard disaster recovery capabilities and data storage in accordance with industry standards and practices to reduce the risk of an interruption in service or the loss of data, due to equipment failure, natural disaster or other calamity. Further, Ebix shall establish and maintain reasonable safeguards against the destruction or loss of Customer's data in the possession of Ebix, which safeguards shall at least be equivalent to those which Ebix provides and maintains for itself and its affiliates. Safeguards shall include, but are not limited to, weekly full system back-ups, daily back-up of changed objects, storage of said back-ups in a separate building and off-site support for disaster recovery to reduce the risk of an interruption in service or of data loss due to equipment failure, natural disaster or other calamity.

13.3 *Government Regulations*. Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

13.4 *Non-Solicitation*. During the Term of this Agreement and continuing through the first anniversary of the termination of this Agreement, each party hereto agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons or entities employed by the other Party Ebix or contracted by Ebix to provide Services to Customer. Notwithstanding the foregoing either party may hire any person or entity as a result of the use of a general solicitation not specifically directed to employees of the other party.

13.5 *No Third Party Beneficiaries*. Ebix and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement, including but not limited to the customers of Customer.

13.6 *Governing Law; Dispute Resolution*. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Georgia (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach thereof, shall finally be settled by arbitration in accordance with the Arbitration Rules (and if Customer is a non-U.S. entity, the International Arbitration Rules) of the American Arbitration Association ("AAA"). There will be three (3) arbitrators (the "Arbitration Tribunal"), the first of which will be appointed by the claimant in its notice of arbitration, the second of which will be appointed by the respondent within thirty (30) days of the appointment of the first arbitrator and the third of which will be jointly appointed by the party-appointed arbitrators within thirty (30) days thereafter. The arbitration shall be held in Johns Creek, Georgia and the language of the arbitration shall be English. The Arbitration Tribunal will not have the authority to award punitive damages to either party. Each party shall bear its own expenses, but the parties will share equally the expenses of the Arbitration Tribunal and the AAA. This Agreement will be enforceable, and any arbitration award will be final, and judgment thereon may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, claims for preliminary injunctive relief and other pre-judgment remedies, may be brought in a state or federal court in the United States with jurisdiction over the subject matter and parties.

13.7 *Severability; Waiver*. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

13.8 *Assignment*. Either party may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets or to a parent, subsidiary of affiliated entity. Customer may not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Ebix, which consent shall not be unreasonably withheld, conditioned or delayed and any attempted assignment or delegation without such consent will be void. Ebix may

assign this Agreement or part thereof or delegate the performance of certain Services to third parties, including Ebix’s wholly owned subsidiaries and/or service providers, provided Ebix controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services. This Agreement will bind and inure to the benefit of each party’s successors and permitted assigns.

13.9 Notice. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to an officer of the receiving party at the address of the receiving party as listed on the Commercial Terms or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is earlier.

13.10 Relationship of Parties. Ebix and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Ebix and Customer. Neither Ebix nor Customer will have the power to bind the other or incur obligations on the other’s behalf without the other’s prior written consent, except as otherwise expressly provided herein.

13.11 Entire Agreement; Counterparts; Originals. This Agreement, including all attachments and documents incorporated herein by reference, constitutes the complete and

exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by Customer shall be deemed objected to by Ebix without need of further notice of objection, and shall be of no effect or in any way binding upon Ebix. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original. This Agreement may be changed only by a written document signed by authorized representatives of Ebix and Customer in accordance with this Section 13.1. For purposes of this Agreement, the term “written” means anything reduced to a tangible form by a party, including a printed or hand written document, e-mail or other electronic format.

13.12 Interpretation of Conflicting Terms. In the event of a conflict between or among the terms in this Agreement, the Commercial Terms, the Technical Requirements, the Description of Features, the Statement(s) of Work (if any), and any other document made a part hereof, the documents shall control in the following order: this Agreement, the Commercial Terms with the latest date, the Statement(s) of Work (if any), the Technical Requirements, the Description of Features, the description of Customer support and other documents.

Authorized representatives of Customer and Ebix have read the foregoing and all documents incorporated therein and agree and accept such terms effective as of the first date written above.

**CUSTOMER**

**EBIX, INC.**

Signature: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

Print Name: Andrew J. Medellin

Print Name: \_\_\_\_\_

Title: Mayor

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

This Agreement incorporates the following documents:

- Attachment A – Commercial Terms
- Attachment B – Description of Features
- Attachment C – Description of Customer Support Services
- Attachment D – Service Level Warranty

- Statement(s) of Work (if any)

**ATTACHMENT A  
COMMERCIAL TERMS**

**Customer: City of Madera, CA**

**CONTRACT DATES: 04/01/2020 – 03/31/2021 (INITIAL TERM)**

**SERVICE COMMENCEMENT DATE: 06/01/2020**

Services: Hosting Ebix products and providing optional services and e-commerce connectivity.

Products: RiskEnvision, as described in Description of Features and Technical Specifications

**Client Project Coordinator: Kevin Newlin**

**Other Approved Contact Personnel: Jasmine Winters**

Milestone	Item	Notes
Contract Execution	User Setup Fees - 3 Users	\$75
	CompWatch Conversion	\$1,000
<b>Total at Go Live</b>		<b>\$1,075</b>
<b>Implementation Services</b> (Billed upon go live)	Project Plan and Management	\$165 (1)(2)
	User training	\$165 (1)(2)
	Periodic Loss Run Import	\$0 (1)(2)
	Startup Assistance	\$165 (1)(2)
	Jun-20 Monthly user and import fees	\$220 (3)
	Jul-20 Monthly user and import fees	\$220 (3)
	Aug-20 Monthly user and import fees	\$220 (3)
	Sep-20 Monthly user and import fees	\$220 (3)
	Oct-20 Monthly user and import fees	\$220 (3)
	Nov-20 Monthly user and import fees	\$220 (3)
	Dec-20 Monthly user and import fees	\$220 (3)
	Jan-21 Monthly user and import fees	\$220 (3)
	Feb-21 Monthly user and import fees	\$220 (3)
	Mar-21 Monthly user and import fees	\$220 (3)
	Apr-21 Monthly user and import fees	\$220 (3)
	May-21 Monthly user and import fees	\$220 (3)
<b>Total Year 1 Fees</b>		<b>\$4,210</b>
Year 2	12 months monthly fees	\$2,640
Year 3	12 months monthly fees	\$2,640
<b>Total On-going Fees</b>		<b>\$7,920</b>
<b>Total 3 Year Contract Fees</b>		<b>\$9,490</b>

**NOTES**

- (1) On-site and off-site designations are for planning purposes only; the client and Envision project managers will determine when on-site visits are necessary and the duration of specific services. Prices for each task, however, are fixed bid prices regardless of location or duration of delivery.
- (2) Travel expenses are not included in this proposal. Travel expenses are billed at cost plus \$40 per diem.
- (3) Monthly User Subscription Fees include access to the following modules: General Liability, Workers Compensation



**ATTACHMENT B**  
**DESCRIPTION OF FEATURES**

**OPERATIONAL FEATURES**

- Customer’s record file information storage and retrieval (Includes: Workers Compensation and General Liability Modules)
  - 1.) Policy data
  - 2.) Claims
  - 3.) Coverage information
  - 4.) Loss and medical information
- Workflow processing “Activity/Diary” system
- Document storage and retrieval
- Distribution of system generated correspondence
  - 1.) Print
  - 2.) E-mail
- Files notes
  - 1.) Entry
  - 2.) Search
- Access and rights levels by user type
- Configurable coding tables

**OPERATIONAL SERVICES**

- Data exchange with other operations systems
- Business process adaptation/initial configuration
- Configurations adjustable by user administrator
- Configuration and training
- Operational support

**ATTACHMENT C**  
**DESCRIPTION OF CUSTOMER SUPPORT SERVICES**

- 1.) Services Provided.** Ebix shall provide Operational and Technical Support Services for the System described in the Master Services Agreement.
- 2.) Support Period.** Access to Support Services begins on the Service Commencement Date and continues through the end of contract period.
- 3.) Submission of Support Requests.** Ebix will accept support requests submitted via e-mail, FAX using Claims Support Request Form, or telephone calls from Customer's designated contact personnel (with e-mail being the preferred method).
- 4.) Hours of Service.** All Support Services provided hereunder shall be performed during the hours of 8:00 a.m. to 5:00 p.m. Eastern Time on weekdays, (except holidays).
- 5.) Place of Performance.** All Support Services hereunder shall be provided from Ebix's facilities. If Ebix personnel are required at a Customer's facility to perform Support Services, approval for out-of-pocket expenses will be secured prior to performance of such services.
- 6.) Cooperation.** Customer agrees to provide full cooperation in locating and correcting errors.
- 7.) Professional Standards.** Ebix will apply generally accepted industry standards to maintain the System in good working order in accordance with the applicable specifications. Ebix will make every reasonable effort consistent with the hours of service contracted and other terms described herein to:
  - a.)** Maintain the System in such a manner as to minimize delay or inconvenience to Customer; and
  - b.)** Provide Error Correction for any duplicable Error reported in a timely manner by Customer to Ebix in accordance with defined error reporting procedures.

**ATTACHMENT D**  
**SERVICE LEVEL WARRANTY**

In the event that Customer experiences any of the service performance issues defined in this Attachment D as a result of Ebix's failure to provide access to the System through the User Software (the "Service Level Warranty"), Ebix will credit Customer's account as described below. The Service Level Warranty shall not apply to any services other than the access to the System through the User Software, and shall not apply to performance issues: (i) caused by factors outside of Ebix's reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties not within the control of Ebix; or (iii) that resulted from Customer's equipment and/or third-party equipment.

(a) *Service Warranty Definitions.* For purposes of this Service Level Warranty, the following definitions shall apply:

(i) "Downtime" shall mean that a Customer is not able to access the System through the User Software for six (6) consecutive hours due to a failure of the System, Ebix's equipment or the Data Center during such period. Downtime shall not include any unavailability during Ebix's scheduled maintenance of the System, Data Center, network and Services, as described in the Rules and Regulations.

(ii) "Service Credit" shall mean an amount equal to the pro-rata monthly recurring charges (i.e., all monthly recurring case file charges) for one (1) day of Service.

(b) *Downtime Service Credits.* In the event Customer experiences Downtime, Customer shall be eligible to receive from Ebix a Service Credit for each Downtime period. Examples: If Customer experiences one Downtime period, it shall be eligible to receive one Service Credit. If Customer experiences two Downtime periods, either from a single event or multiple events, it shall be eligible to receive two Service Credits.

(c) *Downtime Remedial Action.* In the event that Ebix discovers or is notified by Customer that Customer is experiencing Downtime, Ebix will take all actions reasonably necessary to determine the source of the Downtime.

(i) *Discover Source of Downtime; Notification of Customer.* Promptly after discovering or receiving notice of a Downtime, Ebix will determine whether the source of the Downtime is the Customer's equipment, the Ebix equipment connecting the Customer's equipment to the Ebix Data Center or the Data Center. If Ebix determines that the Customer's equipment and Ebix connection are not the source of the Downtime, Ebix will make commercially reasonable efforts to

work with the Customer to determine the source of the Downtime. In any event, Ebix will notify Customer's designated contact person of the source of the Downtime within sixty (60) minutes of identifying the source.

(ii) *Remedy Downtime.* If the source of the Downtime is within the reasonable control of Ebix, Ebix will immediately assign employees and/or representatives to remedy the Downtime, and will make commercially reasonable efforts to remedy the Downtime. If the source of or remedy to the Downtime resides outside of the Ebix's System or equipment, Ebix will use commercially reasonable efforts to notify the party(ies) responsible for the source of the Downtime and cooperate with it (them) to resolve such problem as soon as possible.

(iii) *Failure to Determine Source and/or Remedy.* In the event that Ebix: (A) is unable to determine the source of the Downtime; and/or (B) is the reasonable source of the Downtime and is unable to remedy such Downtime, Ebix will deliver a Service Credit to Customer for each six (6) hour period of Downtime.

(d) *Remedies Shall Not Be Cumulative; Maximum Service Credit.* The aggregate maximum number of Service Credits to be issued by Ebix to Customer for any and all Downtime periods that occur in a single calendar month shall not exceed seven (7) Service Credits. A Service Credit shall be issued in the Ebix invoice in the month following the Downtime, unless the Service Credit is due in Customer's final month of Service. In such case, a refund for the dollar value of the Service Credit will be mailed to Customer. Customer shall also be eligible to receive a pro-rata refund for (i) Downtime periods for which Customer does not receive a Service Credit and (ii) any Services Ebix does not deliver to Customer for which Customer has paid.

(e) THE SERVICE LEVEL WARRANTY SET FORTH IN THIS ATTACHMENT D SHALL ONLY APPLY TO THE FAILURE TO PROVIDE THE SYSTEM THROUGH THE USER SOFTWARE AND DOES NOT APPLY TO (I) ANY IMPLEMENTATION SERVICES; (II) ANY INFORMATION SERVICES; AND (III) ANY SERVICE(S) THAT EXPRESSLY EXCLUDE THIS SERVICE LEVEL WARRANTY. THIS ATTACHMENT D STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND EBIX'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY FAILURE BY EBIX TO PROVIDE ACCESS TO THE SYSTEM THROUGH THE USER SOFTWARE.

**STATEMENT(S) OF WORK (IF ANY)**

**IMPLEMENTATION**

- Project Plan and Management
- RiskEnvision Installation
- Data Conversion from previous system
- User training – Online 1 hour
- Startup Assistance – Offsite