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AGREEMENT BETWEEN THE CITY OF PEORIA AND  
TATA INFOTECH LTD. FOR A BUSINESS LICENSE/PRIVILEGE TAX SYSTEM  
(TaxMantra™)

This Agreement (herein "Agreement") is made on 22 <sup>October</sup> ~~September~~ 2003, by and between the City of Peoria, Arizona (herein "Peoria"), having its offices at 8401 West Monroe Street, Peoria, AZ 85345, and Tata Infotech Ltd. (herein "Tata"), an India based Corporation having its registered office at 216-A Manish Commercial Centre, Dr. A.B. Road, Worli, Mumbai-400 021-India, and its local offices at 7918 Jones Branch Drive, Suite 850, Mclean, VA 22102.

The term "Peoria" shall refer to the City of Peoria, its employees, officers, agents and sub-contractors.

The term "Tata" shall refer to Tata Infotech, Ltd, its employees, officers, agents and sub-contractors.

The term "System" shall refer to the Tax and License Application consisting of Tata's TaxMantra™ software and all related modules.

Peoria and Tata may be referred to individually as a "Party" or collectively as "Parties".

In consideration of the mutual covenants, promises, and undertakings contained herein, the Parties agree as follows:

1. Furnishing of System

Subject to the terms and conditions set forth herein, Tata shall furnish and install the System at all site(s) designated by Peoria and sell to Peoria the services listed on Exhibit C and grant a license for use of the computer System listed on Exhibit C, in compliance with all of the contract documents. All sites shall be limited to sites within the City of Peoria.

Supplies used by Peoria shall conform to Tata's specifications or equivalent as set forth in Tata's manual as provided to Peoria pursuant to Section 9 of this Agreement.

2. Purchase of System License(s), Service(s) and Support

Peoria hereby agrees to purchase a license(s) for the use of the System and related documentation listed in Exhibit C at the price(s) specified in Exhibit C of this agreement, in accordance with the provisions of Agreement # C2001-213 entered into between City of Tempe and Tata, subject to provisions of section 3B herein below. Peoria

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hereby agrees to purchase the Tata services listed in Exhibit C at the prices specified in Exhibit C.

Licenses for optional modules and related documentation listed in Exhibit D may be purchased at the discretion of Peoria at the prices specified in Exhibit D. Services, support and related documentation for optional modules and related documentation listed in Exhibit D may be purchased at the discretion of Peoria at the prices specified in Exhibit D.

Tata shall inform Peoria of any new product within ten (10) business days of such public announcement and Peoria shall have thirty (30) business days to inform Tata whether it wishes to acquire the new product.

3. Contract Documents

A. Contract Documents shall consist of:

1. This Agreement, including the following Exhibits attached hereto:

- EXHIBIT A: Schedule of Activities
- EXHIBIT B: Not Used
- EXHIBIT C: System License(s) and Services
- EXHIBIT D: Optional Modules Services
- EXHIBIT E: Payment Schedule
- EXHIBIT F: Testing Procedures
- EXHIBIT G: System Maintenance Agreement
- EXHIBIT H: Features to be Delivered/Developed
- EXHIBIT I: Service Level Agreement (SLA)

- 2. Agreement reference # C2001-213 dated January 25, 2002 signed between City of Tempe and Tata for the procurement of the Systems and services related thereto. In referencing this Agreement, Peoria is taking recourse to Clause 6 of the Special Terms and Conditions of The City of Tempe's Request for Proposal # 01-087, which permits use of the aforesaid Agreement by other Municipalities and Government Agencies of the State of Arizona.
- 3. Tata Statement of Work for implementation of TaxMantra Product at city of Peoria (TM/COP/SOW/1.0) and
- 4. Tata letter dated January 6, 2003, addressed to Dan Zenko, CPPB, Contract Officer, City of Peoria.

B. Contract Reference

- 1. Each of these documents, 3(A) 1 through 4, is incorporated herein by reference as if set forth in full, and shall constitute a part of this

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Agreement. In the event of any conflict in the obligations pursuant to the above documents, control shall be determined by the provisions of this Agreement.

The failure of this Agreement to include reference to any matter contained in any other Contract Document shall not be deemed to constitute a waiver of such matter.

4. Site Preparation

Tata shall furnish all necessary labor, materials, and other services to accomplish installation of the System at Peoria's site(s). Tata shall be responsible for the installation of the System. Peoria shall be responsible for providing hardware and network infrastructure.

Installation shall be performed during normal Peoria business hours, or at such times as mutually agreed upon by Peoria and Tata. Peoria shall make all the necessary arrangements to allow Tata personnel sufficient workspace and access to the installation location(s) during normal business hours or at such other times as may be mutually agreed upon. All debris generated in the performance of work during installation shall be removed by Tata at no additional cost to Peoria.

When Tata determines that the System is ready for use, that is, the System has been installed at the site(s) specified by Peoria, Tata shall certify in writing to Peoria that the System is installed and ready for use.

5. Delivery Schedule

The delivery dates are set forth in Exhibit A hereto. The parties will utilize their best efforts to meet the delivery dates. However, during the Gap Analysis Matrix phase, the parties will meet to revise the delivery dates as necessary. Any such revisions to the delivery dates shall be mutually agreed to by the parties in writing, and the revised dates shall thereafter control.

6. System License

A. General

Subject to the terms and conditions herein set forth, Tata hereby grants to Peoria a non-transferable, non-exclusive and royalty free license (the "License") for the use of the System, as well as any additions and/or supplements thereto, for as long as Peoria owns and operates the System solely in the conduct of Peoria's business. Peoria acknowledges that by virtue of this License, Peoria acquires only the right to use the original and permitted duplicate copies of the System, as well as any additions and/or

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supplements thereto, as described herein and does not acquire any rights of ownership in the System which rights shall remain exclusively with Tata. The term of the License shall commence upon delivery of the first module of the System and shall remain in full force and effect as long as Peoria is substantially in compliance with all the provisions of this Agreement.

### B. Protection of Proprietary System

Peoria agrees that the System, together with all materials and knowledge related thereto, shall be held in confidence and shall not at any time, either during the term of the License or thereafter, be made available in any form to any person or entity other than to employees of Peoria or consultants or contractors retained by or responsible to Peoria to the extent that such disclosure is reasonably necessary to Peoria's use of the System authorized hereunder, without the express written consent of Tata. Peoria agrees that in the event of its employing any consultants or contractors who would have access to the System, it will make all reasonable efforts to ensure that such consultants or contractors execute an agreement or agreements whereby they recognize, accept, and agree to observe the protection agreements afforded to Tata by this section.

### C. Right to Copy

Peoria agrees that it will not copy or in any way duplicate the System or any materials related thereto, in whole or in part, except as expressly authorized to do so by this Agreement or by written consent of Tata.

Tata hereby expressly authorizes Peoria to copy the System for its own use, solely for archive or emergency restart purposes or to replace a worn copy.

### D. Materials Developed by Tata or Peoria

Peoria agrees that all training and procedural materials developed by Tata in conjunction with the System shall be the property of Tata. Peoria further agrees that additions and supplements to the System which may be developed for Peoria through the reimbursed or unreimbursed efforts of Tata, whether or not in conjunction with Peoria, shall be the exclusive property of Tata. All training and procedural materials developed by Peoria shall be the exclusive property of Peoria.

### E. Proprietary Rights

Tata retains for itself, and Peoria acknowledges that Tata so retains, all proprietary rights in and to all designs, engineering details, and other data

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pertaining to the System, and retains for itself the sole right to manufacture, lease, license, and sell any and all such systems. The System shall be deemed to be trade secrets of Tata.

### F. Ownership of Data

All taxpayer information entered into the database of Peoria or supplied to Tata by Peoria are and shall remain the sole property of Peoria. Tata shall not, without Peoria's written consent, copy or use such information, except to carry out contracted work for Peoria; shall not transfer such information to any other party not involved in the performance of this Agreement; and shall return submitted information to Peoria upon completion of the work hereunder. Peoria shall have the right, without the consent of Tata, to extract by any method such information at no cost to either Peoria or Tata. Tata agrees to assist Peoria, if requested, in making such extracts at Tata's then published rates. If Peoria elects to extract information from the System without the assistance of Tata, then Peoria agrees to remain in substantial compliance with the License hereunder and further agrees not to reverse engineer the System or any part of the System components in extracting information.

### G. Third Party Software:

If Tata agrees to supply any third party software to Peoria under this Agreement, Peoria recognizes and agrees that such third party software items shall be subject to licensing agreements prescribed by the respective licensors and that Peoria's right to use such third party software shall be restricted to the rights specifically granted by the licensor thereof, in terms of such licensing agreement.

## 7. Patent and Copyright Protection

Tata shall pay all copyright, patent, or other royalties, if any, with respect to the use of the System. Tata shall defend and hold harmless Peoria, its employees, officers and agents, at Tata's expense, against any action brought against Peoria to the extent that the action is based on a claim that the manufacture, sale, operation or use of the System infringes on any third party's patent rights or breaches any third party's copyright or industrial property rights, and Tata shall pay any and all costs and damages payable by Peoria with respect to any such action.

Without limiting Tata's duty to defend and hold harmless as stated above, if the System becomes or in Tata's opinion is likely to become the subject of a

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claim based on an alleged infringement or breach as aforementioned, Tata may, at its sole expense and option, with prior written consent of Peoria, do one of the following:

- (a) Modify the System so that there is no longer any infringement or breach without adversely affecting the functional or performance capabilities of the System;
- (b) Procure for Peoria the right to continue to use the System;
- (c) Substitute for the System another system having a functional and performance capability equivalent to the replaced System or which satisfies Peoria's need; or
- (d) With the consent of Peoria, take back the System and refund any sums Peoria has paid Tata on account of the purchase price less a reasonable amount for use, damage, depreciation, and obsolescence.

Tata shall have no liability respecting any claim of infringement or breach as aforementioned based entirely upon the combination, operation, or use of the System with equipment, software, apparatus, devices, or things not supplied by Tata or in a manner not substantially consistent with Tata specifications and instructions.

8. Training

Tata shall provide, at no additional charge, one (1) training session for ten (10) employees over a seven (7) day training session on the operations and use of the System at Peoria's location. Any additional training required by Peoria shall be provided by Tata as set forth in Exhibit D of this Agreement at times and locations to be mutually agreed upon by Tata and Peoria. Any additional training required as a result of upgrades to the System purchased under this Agreement will be provided as mutually determined by Tata and Peoria. Nothing in this Agreement shall be construed to obligate Peoria to purchase any additional training or periodic review sessions.

Peoria reserves the right, without incurring any additional charge or expense, to audio tape or video tape Tata's training sessions for later re-use by Peoria at no cost to Tata.

9. Documentation

Complete documentation as defined in this section shall be delivered to Peoria within two (2) weeks after signing of this Agreement.

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All documentation shall be amended periodically to indicate any changes in the System made after the System is certified ready for use and all such documentation shall be delivered to Peoria in proper form prior to final payment.

Tata agrees to provide to Peoria, without additional charge:

- A. Three (3) copies of a Tata TaxMantra™ Manual (Users and Technical) on CD-ROM and three (3) hard copies which describes the System functions, including but not limited to such topics as security, file descriptions, file maintenance, searching, taxpayer module features, tax auditing features, payment processing features, collection module features, and reports.
- B. Three (3) copies of all updates to Tata's TaxMantra™ Users Manual due to fixes and/or enhancements to the System licensed to Peoria that have been generally distributed by Tata.
- C. The License granted by Tata hereunder is for the use of the System in object code only.
- D. Escrow Arrangement
  - i) At Tata's cost and expense, Tata agrees to deposit the TaxMantra™ (excluding any third party component) Source Code with an Escrow Agent. The Escrow Agreement shall be signed by Tata, Peoria and the Escrow Agent, upon mutually agreed terms and a copy of Source Code for both existing and modified TaxMantra™ (excluding any third party component) Software shall be delivered to the Escrow Agent, immediately after implementation of the system, with regular deposits made of TaxMantra™ (excluding any third party component) software during the term of this Agreement, as new releases are delivered to Peoria.
  - ii) The Escrow Agreement shall, inter alia, provide that the Escrow Agent will be authorized to release the Source Code to Peoria, only in the event of Tata's failure to provide the contracted support for TaxMantra™, Tata's bankruptcy, uncured material default under this Agreement, or ceasing to do business in the ordinary course. Such release of Source Code to Peoria shall be only for the purpose of supporting itself and none other.
  - iii) The Escrow Agreement will expire in the event of Peoria discontinuing or not opting for Annual Maintenance Services from TATA or if this Agreement is terminated for reasons other than those specified in (ii) above.

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All revisions to documentation and manuals must be supplied by Tata at no additional cost, so long as a maintenance agreement is in effect between Peoria and Tata. The format of this documentation may change over time from CD-ROM to web-based.

Tata grants to Peoria the right to copy or otherwise reproduce for training or other internal uses portions of Tata produced documentation and manuals furnished pursuant to this provision at no additional charge provided that Tata's statement of copyright be included on each copy.

10. Maintenance Agreement

Tata and Peoria shall enter into an agreement for maintenance (Exhibit G) of the System described herein, covering labor expenses for corrective and preventive maintenance. A copy of the System Maintenance Agreement is attached hereto as Exhibit G.

11. System Functional Acceptance Test

A. All purchased System modules shall be tested in accordance with Exhibit F within thirty (30) business days of completion of Tata training for the System.

Peoria shall notify Tata in writing when the System Functional Acceptance Test is completed, indicating those functions that have not performed correctly. If no such notification is received by Tata within ten (10) business days after completion of the test, then the system modules shall be deemed to have been accepted by Peoria. Tata shall have thirty (30) business days from receipt of notice to make the necessary corrections. The test will be repeated within thirty (30) business days of receipt by Peoria of corrections from Tata.

B. If successful completion of this System Functional Acceptance Test is not attained due to reasons solely attributable to Tata, Peoria, at its sole discretion, shall have the right to terminate this Agreement or to continue the test. If, notwithstanding Peoria's rights under this subparagraph to terminate the Agreement, Peoria has permitted the test to be continued, such continuance by Peoria shall not constitute an abrogation of Peoria's rights or a waiver of Peoria's rights to terminate the Agreement; and such rights shall remain in effect until such time as either a successful completion of the test is accomplished, or Peoria formally terminates the Agreement by notice to Tata. Peoria shall give to Tata notice of default under this paragraph and a thirty (30) day right to cure such default. If the default is not cured within thirty (30) days, this Agreement shall be terminated. Upon such termination, Tata shall refund to Peoria all

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payments made to Tata under this Agreement for the System and Peoria shall return the System to Tata at Tata's expense. No remedy reserved by Peoria under this Agreement is intended to be exclusive of any other remedy now or hereafter existing in law or equity.

C. In the event that the System Acceptance Functional Test is not attained due to reasons solely attributable to Peoria, Tata shall have the right to terminate this Agreement without any liability to refund any payments made by Peoria under this Agreement.

12. Schedule of Payments

A. Invoices

Payment is due no later than thirty (30) business days after receipt of an invoice by Peoria signifying the completion of the milestones listed in Exhibit E and submission of an invoice by Tata.

Invoices shall be submitted to:

City of Peoria  
Accounts Payable  
8401 West Monroe Street  
Peoria, AZ, 85345

Peoria may withhold any payments due Tata due to:

- (1) Damage to Peoria;
- (2) Failure to carry out the work in accordance with this Agreement;  
or
- (3) Failure by Tata to submit and complete and Peoria to accept the work as identified on Exhibits A and E of this Agreement.

Payments shall be made by Peoria to Tata for amounts withheld only after the above grounds for non-payment have been removed.

In the event Peoria withholds any payment for any of the above grounds, Peoria must notify Tata of the reason for withholding payment within ten (10) business days of Peoria's receipt of the invoice from Tata.

B. Taxes

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Peoria will only be responsible for all applicable State of Arizona, Maricopa County and City of Peoria privilege (sales) or use tax related to this Agreement. Tata will be responsible for all other taxes.

13. Conversion of Data

The cost for conversion of live data shall be determined at the rates described in Exhibit D. Estimated time is 80-100 hours for one conversion cycle, provided data conversion programs are ready and the existing data is purified and extracted from the current system. Additional conversion cycles may be required based on the amount of data rejected during data conversion.

14. Warranty

This Agreement includes any warranty or representation made by Tata in the Contract Documents (set forth herein) as to software performance, total System performance, or any other design or functional characteristics of the System.

A. Performance Levels

Tata expressly warrants that the configuration provided pursuant to this Agreement will meet or exceed the Functional Acceptance Test specified in Exhibit F.

Peoria will test each new System release using the same testing standards developed for the Final Acceptance Test outlined in Exhibit F. If the new System release meets the conditions of the test, Peoria will certify that release and that release will be the latest release used by Peoria. If the new System release does not meet the conditions of the test, Peoria may, at its option, elect to freeze the release schedule at the latest certified release or to purchase additional equipment necessary to use the new release. If Peoria chooses to freeze the release schedule, Tata will maintain that release for two (2) years or until five (5) years from the date of first System implementation, whichever is earlier.

B. Other Warranties

Tata warrants that the System shall be merchantable and fit for the purposes of processing/maintaining tax data, taxpayer record keeping, licensing information and payment processing as described in the Contract Documents.

Tata warrants to Peoria that the System shall perform in accordance with the specifications set forth in the Contract Documents and that at the time

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of executing this Agreement Tata has the right to grant the System licensed (TaxMantra™), and obtain and grant the appropriate license(s) to other related TaxMantra™ modules to Peoria.

Tata warrants that all client products are fully functional running under Windows 9x, XP, WinNT, 2000 and Microsoft SQL Server.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY TYPE WHETHER EXPRESSED OR IMPLIED.

15. Foreign Component Interface

Peoria will provide central site hardware as specified in the Proposal.

Peoria may, at its option, connect to the System purchased or licensed under this Agreement any equipment manufactured or supplied by others including, but not limited to peripheral equipment, other computers, communications equipment, terminal devices, and the like, provided there is a standard industry established interface of RS232 available, or using an Ethernet TCP/IP network. Tata shall promptly disclose, subject to confidentiality, trade secret, or non-competition agreements, upon request by Peoria, the technical specifications for any given interface point on the System.

In the event that Tata is required to perform maintenance services on the System because of damage to the System resulting from the attachment of equipment not approved by Tata, such service shall be billed to Peoria at Tata's then current standard hourly maintenance rates.

If requested by Peoria, Tata will consult with Peoria at Tata's then published rates regarding the compatibility and installation of other proposed equipment with the System.

WORKSTATION REQUIREMENTS

To run TaxMantra™ System the PC requirements are:

- A networked PC, or any device including network PCs that can connect to the System. The recommended PC configuration is as specified below;
  - Windows NT/95/98/2000/XP with TCP/IP
  - 1x Intel Pentium 4 (latest) processor
  - At least 256 MB RAM

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- At least 10 GB of available hard disk space
- Mouse

### APPLICATION SERVER REQUIREMENTS

- Windows 2000 with TCP/IP
- 2x Pentium 4 (latest) processors
- At least 2 GB RAM
- 20 GB Hard Drive
- CD-ROM drive; drive must be connected to the PC or connected to a network to which the PC has access

### DATABASE SERVER REQUIREMENTS

- Windows 2000 with TCP/IP
- 2x Pentium 4 (latest) processors
- At least 2 GB RAM
- 30 GB Hard Drive
- Microsoft SQL Server 2000

### WEB SERVER REQUIREMENTS

- MS IIS on Windows 2000 with TCP/IP
- 1x Pentium 4 (latest) processor with dual processors slots on Mother Board
- At least 1 GB RAM
- 15 GB Hard Drive

16. Indemnification

Tata agrees to indemnify, defend and hold harmless Peoria, its employees, officers and agents from any and all claims, demands, suits, actions,

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proceedings, loss, cost and damage of every kind and description, including any reasonable attorney's fees and/or litigation expenses, which may be brought or made against any person, caused by, arising out of, or contributed to, in part, by reasons of any act, error or omission, fault, mistake or negligence of Tata, its employees, agents, representatives or subcontractors, their employees, agents or representatives in connection with the performance of this Agreement. Tata's obligation under this section shall not extend to any liability caused by the sole negligence of Peoria.

17. Damages & Limitation of Liability

NEITHER PARTY IS LIABLE FOR INCIDENTAL, INDIRECT OR UNFORESEEABLE CONSEQUENTIAL DAMAGES, HOWEVER CAUSED.

Tata shall be liable for all direct damages to Peoria caused by the misconduct and negligence of Tata. Any damage done to the Peoria network by Tata or the System shall be direct damage. Tata shall be liable for the damage and will repair the network at no charge to Peoria. Tata shall be discharged under this paragraph once the System is accepted by Peoria, except to the extent such damages were caused by actions of Tata prior to acceptance, but not yet discovered by Peoria.

18. Insurance

A. Tata, at its sole cost and expense and for the full term of this Agreement or any renewal thereof, shall purchase and maintain not less than the following minimum insurance coverage and limits of insurance which shall be maintained with insurers and under forms of policies satisfactory to Peoria.

- (1) An EXTENDED BROAD FORM MINIMUM COMMERCIAL COMPREHENSIVE GENERAL LIABILITY INSURANCE POLICY covering Bodily Injury and Property Damage, including coverage for contractual liability (including defense expense coverage for additional insurance), personal injury, broad form property damage, products and completed operations, with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to Peoria or the general aggregate shall be Two Million Dollars (\$2,000,000).
- (2) A WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY POLICY written in accordance with the laws of the State of Arizona and providing the following coverage for any and all employees of Tata.

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- (a) Statutory Workers' Compensation Coverage A (statutory limit).
  - (b) Employers' Liability Insurance - Coverage B. Not less than: One Hundred Thousand Dollars (\$100,000) each accident/BI, Five Hundred Thousand Dollars (\$500,000) policy limit BI by disease and One Hundred Thousand Dollars (\$100,000) each employee BI by disease.
  - (3) A COMMERCIAL AUTOMOBILE POLICY with a minimum combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property damage, applicable to vehicles owned, hired, or non-owned used in pursuit of any of the activities associated with this Agreement.
  - (4) Software errors and omissions liability coverage with limits of One Million Dollars (\$1,000,000). If coverage is made on a claims made basis, this coverage will remain in force 2 years after the "Go Live" date.
- B. These policies shall be considered primary insurance as respects to any other valid and collectible insurance Peoria may possess including any self-insured retention Peoria may have, and any other insurance Peoria does possess shall be considered excess insurance only.
- C. During the term of the Agreement, no cancellation or non-renewal of this policy or modification of the coverage afforded under this endorsement shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such modification or cancellation to City of Peoria, City Procurement Office,.
- D. The City of Peoria shall be added as an additional insured to Tata's insurance.
- E. A copy of the Certification of Insurance and completed coverage verification shall be provided to Peoria by each of the Tata's insurance companies as evidence of the stipulated coverage within thirty (30) days of the effective date of this Agreement.
19. Independent Contractor

Tata shall perform the services hereunder as an independent contractor and shall furnish such services in its own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of Tata be considered as an employee of Peoria.

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20. Affirmative Action

In connection with the performance of this Agreement, neither Party shall discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin.

Tata agrees it will comply with all U. S. Federal Equal Opportunity Employment requirements.

21. Non-Assignability

No assignment of this Agreement or any right or interest therein by Tata shall be effective unless Peoria shall first give its written consent, which consent shall not be unreasonably withheld. In no case shall such consent relieve Tata from its obligation or change the terms of this Agreement. The performance of the Agreement by Peoria and Tata is of the essence of this Agreement.

22. Subcontracting

Tata may use and shall pay subcontractors in connection with the work performed under this Agreement. No subcontract shall be entered into by Tata to furnish any of the services specified herein without Peoria's advance written approval, which approval shall not be unreasonably withheld. Tata is responsible for contract performance whether or not subcontractors are used.

23. Publicity

Each Party agrees to submit to the other all press releases, advertising, sales promotion, and any other publicity matters relating to any product furnished by Tata to Peoria wherein the other Party's name is mentioned, excluding Tata's customer lists and Peoria's internal newsletters and training materials. Neither Party shall publish or knowingly permit to be published any such material without the prior written consent of the other.

24. System Modification

Tata may provide to Peoria from time to time modifications of the construction and/or the design of the System. Peoria agrees to install such System modifications within one hundred twenty (120) days of their receipt from Tata. If necessary, Peoria shall allow Tata access to the System during normal business hours, or at such other times as may be mutually agreed upon, for the purpose of installing such modifications. In the event that Tata provides such modifications to Peoria, Tata shall supply documentation and training, which shall be sufficient for the use and operation of the modified System by Peoria.

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If the System modifications cannot be certified using the same testing standards developed for the Final Acceptance Test outlined in Exhibit F, Peoria may, at its option, choose not to install the new release and freeze releases at the latest certified release. Tata agrees to maintain that release for two (2) years or until five (5) years from the date of first System implementation, whichever is earlier.

25. Purchase of Additional System

Any price reductions that occur before Peoria orders the System will be made available to Peoria, which at its option may use the reduced price in lieu of prices specified in this Agreement.

Peoria shall be informed of Tata's release of new modules in the same manner as all Tata customers are notified.

26. Peoria's Responsibilities

A. Peoria will provide adequate and timely support or information with regard to its administrative, operational, and management procedures, and any data necessary to effectively complete implementation or installation of the System. Once the installation has been completed, Peoria will be responsible for managing and operating the System.

B. Peoria agrees to provide Tata with certain data that will be incorporated into the building of various data files and which are essential to the implementation of the System. Tata will provide Peoria with the necessary specifications for such data. Tata will not assume liability for incorrect System performance resulting from failure of Peoria to submit appropriate data, or from the submission of erroneous data.

27. Key Personnel

Peoria agrees to appoint one person as the prime contact for Peoria with Tata.

Tata agrees to appoint one person (Ashwini Chharia —Director of Business Development) as the prime contact for Tata with Peoria. This person will be experienced in financial services implementation projects and will have, or have available, experience in the migration from non-Tata systems.

Should either Party change the designated prime contact during the term of this Agreement, that Party shall provide written notice of the change to the other Party.

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28. No Waiver

No waiver of any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement.

29. Force Majeure

The Parties shall exercise every reasonable effort to meet their respective obligations hereunder, but shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, acts of God, acts or omissions of the other Party, Government acts or omissions, fires, strikes, national disasters, wars, riots, transportation problems and/or any other cause whatsoever beyond the reasonable control of the Parties. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results of effects of the force majeure prevent the party from resuming performance in accordance with this Agreement.

30. Annual Appropriation of Funds

This Agreement shall commence upon the day first provided herein and continue in full force and effect until termination in accordance with its provisions. The agreement of Peoria to pay to Tata any amount of money hereunder or to expend any money in the performance of the obligations of Peoria hereunder after the end of the current fiscal year on June 30, 2004 or after the end of any subsequent fiscal year shall in each instance be subject to the funds for such obligations being budgeted, appropriated and available. In the event funds for the payment of such obligations of Peoria are not budgeted, appropriated and available, this Agreement shall terminate and be of no further force and effect and Peoria shall be liable only for payments due through the end of the preceding fiscal year. Peoria shall not fail to budget and appropriate funds in each fiscal year during which this Agreement shall be in force and effect in order to acquire similar equipment or system from a third party. Upon request from Tata, Peoria will inform Tata on an annual basis the amounts budgeted and appropriated for the fiscal year prior to commencement of the fiscal year.

31. Overcharges For Antitrust Violations

Peoria maintains that, in actual practice, overcharges resulting from antitrust violations are borne by Peoria. Therefore, to the extent permitted by law,

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Tata hereby assigns to Peoria any and all claims for such overcharges as the goods and/or services used fulfill this Agreement.

32. Notices

All notices given hereunder shall be sent registered or certified mail, return receipt requested, postage prepaid addressed to the other Party at the following address or such other address as either Party may specify in writing.

Peoria:  
City of Peoria  
Materials Management  
8401 West Monroe  
Peoria, AZ, 85345

With a copy to

City of Peoria  
Revenue Manager  
8401 West Monroe  
Peoria, AZ, 85345

Tata Infotech Ltd.

Ashwini Chharia  
Tata Infotech Ltd.  
7918 Jones Branch Drive  
Suite 850  
McLean, VA 22102

With a copy to

Pauroos D. Karkaria  
Chief Financial Officer  
Tata Infotech Ltd.  
216-A Manish Commercial Centre  
Dr. A.B. Road  
Worli Mumbai-400 021-India

A notice shall be deemed given as of the date such notice is received as shown on the return receipt.

Furthermore, such notice may be given by delivering personally such notice, if intended for Peoria, Materials Management with a copy to Revenue Manager and, if intended for Tata, Ashwini Chharia (Director of Business Development) with a copy to Pauroos D. Karkaria (Chief Financial Officer), or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

DUPLICATE  
ORIGINAL

33. Governing Law

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of Arizona.

If a dispute arises concerning the operation, performance, enforcement, and interpretation of the provisions of this Agreement, such dispute will be commenced in the State Superior Court, Phoenix, Arizona, and interpreted according to the law in Arizona. The parties shall agree that venue and exclusive jurisdiction for the resolution of all disputes arising under the Agreement shall be in the Arizona state courts. In any action to construe and enforce the terms of this Agreement, the prevailing parties shall be entitled to an award of its reasonable attorneys' fees and costs

34. Severability

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

35. Entire Agreement

This Agreement and incorporated documents contain the entire understanding of the Parties hereto and neither it nor the rights and obligations hereunder may be changed, modified, or waived except by an instrument in writing signed by the Parties hereto.

The Parties hereby indicate their acknowledgment and acceptance of the terms and conditions stated in this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall be effective as of the day and year first indicated above.

DUPLICATE  
ORIGINAL


36. Non-Solicitation

During the period of this Agreement and two (2) years thereafter neither party shall directly or indirectly employ any personnel who is in the employment of the other.

CITY OF PEORIA  
A municipal corporation


By:   
Terrence L. Ellis, City Manager

APPROVED AS TO FORM:

  
Stephen M. Kemp, City Attorney

ATTESTED BY:

  
Denise L. Graziano, City Clerk



TATA INFOTECH LTD.

By:   
J. Jagannadhan  
Director – Business Development.

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