

**A
RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES WITH FIFTH ASSET,
INC., D/B/A/ DEBTBOOK, FOR A SOFTWARE SUBSCRIPTION TO FACILITATE NEW
ACCOUNTING STANDARDS**

WHEREAS, pursuant to its general municipal powers and C.R.S. § 31-15-101, the City of Cherry Hills Village ("City") is authorized to enter into contracts for the performance of general municipal governance and services; and

WHEREAS, the City of Cherry Hills Village's Purchasing Policy requires City Council approval for non-budgeted transactions over \$10,000.00; and

WHEREAS, the City Administration Department desires to make purchases in excess of \$10,000.00 that were not included in the approved 2024 budget to implement software that facilitates new governmental accounting standards; and

WHEREAS, the City wishes to enter into an agreement for professional services with Fifth Asset, Inc., d/b/a/ DebtBook, a Delaware corporation, for the use of a subscription-based information technology arrangement management application (the "Agreement"); and

WHEREAS, the City Council desires to approve the Agreement and further desires to authorize the Mayor to execute the Agreement on behalf of the City once in final form.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cherry Hills Village, Colorado that:

Section 1. The City Council hereby: (a) approves the Agreement in substantially the same form as attached hereto as **Attachment A**; (b) authorizes the City Attorney, in consultation with the Director of Finance and Administration and the City Manager, to negotiate appropriate changes to the Agreement that do not materially increase the City's obligations; and (c) authorizes the Mayor to execute the Agreement on behalf of the City once in final form.

Section 2. This Resolution shall be effective immediately upon adoption.

Introduced, passed and adopted at the
regular meeting of City Council this 17th day
of September, 2024, by a vote of 5 yes 0 no.


(SEAL)


Kathleen Brown, Mayor

ATTEST:

APPROVED AS TO FORM:


Laura Gillespie, City Clerk


Kathie B. Guckenberger, City Attorney

Attachment A
Agreement for Professional Services



**City of Cherry Hills Village, Colorado
AGREEMENT FOR PROFESSIONAL SERVICES**

Project/Services Name: DEBTBOOK GASB 96

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Service Agreement") is made and entered into by and between the City of Cherry Hills Village, a home rule municipality of the State of Colorado, with offices at 2450 E. Quincy Avenue, Cherry Hills Village, Colorado 80113 (the "City"), and Fifth Asset, Inc., d/b/a/ DebtBook, a Delaware corporation with offices at 1431 W. Morehead St. Ste 200, Charlotte, NC ("Contractor") (each individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the City requires certain Software-as-a-Service as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to provide the services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Service Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. **Services.** Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Order Form set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Services" or "Order Form"). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and the City, through this Service Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. **Changes to Services.** A change in the Order Form shall not be effective unless authorized through a written amendment to this Service Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Service Agreement.

C. Duty to Inform. The Contractor shall perform the Services in accordance with this Service Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Service Agreement.

D. Time of Performance. The Contractor shall perform all Services in accordance with this Service Agreement commencing on the Effective Date, as set forth in Section II of this Service Agreement, until such Services are terminated or suspended in accordance with this Service Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services, unless due to non-payment or other material breach of the Service Agreement by City.

II. TERM AND TERMINATION

A. Term. This Service Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until September 1, 2027, or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Service Agreement, subject to annual appropriation.

B. City Termination for Insufficient Funds. If sufficient funds are not appropriated to pay for the Services, then the City may terminate the Service Agreement at any time without penalty following thirty (30) days prior written notice to Contractor.

C. Termination for Non-Performance. Should a party to this Service Agreement fail to materially perform in accordance with the terms and conditions of this Service Agreement, this Service Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Service Agreement shall be terminated if there is a failure to timely cure the non-performance (the "Termination Date"). For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Service Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. Provided that notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party. No refunds will be provided for material breaches by City.

D. Delivery of Notices. Any notice permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XI.D of this Service Agreement or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after

deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

III. REPRESENTATIVES AND SUPERVISION

A. City Representative. The City representative responsible for oversight of this Service Agreement and the Contractor's performance of Services hereunder shall be the City Manager or his or her designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Service Agreement shall be Edgar Guilfuchi ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the City's need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Service Agreement and be subject to cure or remedy, including possible termination of the Service Agreement, as provided in this Service Agreement.

IV. COMPENSATION

A. Not-to-Exceed Amount. Following execution of this Service Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall not exceed **Twenty-Six Thousand Seven Hundred Twenty Dollars and 00/100 (\$26,720.00)** ("Not-to-Exceed Amount") unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Service Agreement. City shall pay Contractor annually in advance in accordance with the terms of the Order Form described in **Exhibit A**.

B. Reimbursable Expenses.

1. If this Service Agreement is for lump-sum compensation, there shall be no reimbursable expenses.

2. If the Service Agreement is not for lump-sum compensation, the following shall be considered "reimbursable expenses" for purposes of this Service Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor's invoices:

☒ None

- ☐ Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax-deductible business expense)
- ☐ Printing and Photocopying Related to the Services (billed at actual cost)
- ☐ Long Distance Telephone Charges Related to the Services
- ☐ Postage and Delivery Services
- ☐ Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Service Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

C. No Waiver. The City's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Service Agreement or of any cause of action arising out of the performance of this Service Agreement.

V. PROFESSIONAL RESPONSIBILITY

A. General. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law.

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Service Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Service Agreement.

VI. INDEPENDENT CONTRACTOR

A. General. Contractor is an independent contractor. Notwithstanding any other provision of this Service Agreement, all personnel assigned by Contractor to perform work under the terms of this Service Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

B. Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS SERVICE AGREEMENT.

D. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

VII. INSURANCE

A. General. During the term of this Service Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- ☒ The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Service Agreement ("Contractor Insurance"); OR
- ☐ The Contractor shall secure and maintain the following ("Required Insurance"):
- ☐ Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.
- ☐ Comprehensive General Liability insurance with minimum combined single limits of _____ Dollars (\$_____) each occurrence and of _____ Dollars (\$_____) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
- ☐ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than _____ Dollars (\$_____) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

- ☐ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of _____ Dollars (\$_____) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Service Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Insurance Certificates. Contractor shall provide to the City a certificate of insurance as evidence that the required policies are in full force and effect **prior to the commencement of the Services.** The certificate shall identify this the Project/Services Name as set forth on the first page of this Service Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Service Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Service Agreement upon which the City may immediately terminate this Service Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Service Agreement.

VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, and assigns from and against all third-party claims, liability, penalties, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, penalty, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise directly out of this Service Agreement if such injury, loss, penalty, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any

employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor. Contractor expressly agrees that the provisions of this paragraph include its obligations as set forth in Section XI.V. of this Service Agreement.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Service Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. REMEDIES

A. In addition to any other remedies provided for in this Service Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Service Agreement. Substantial failure to perform the duties and obligations of this Service Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities, or inactions by the Contractor that result in a material breach of this Service Agreement. The remedial actions include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
4. Terminate this Service Agreement in accordance with this Service Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

X. RECORDS AND OWNERSHIP

A. Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Service

Agreement, are to be retained and stored in accordance with the City's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Service Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Service Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

B. City's Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Service Agreement.

C. Ownership. There will be no work product under this Service Agreement. Other materials, statistical data derived from other clients and other client projects, software, methodology, and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Service Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. Return of Records to City. At the City's request, upon expiration or termination of this Service Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Service Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

XI. MISCELLANEOUS

A. Governing Law and Venue. This Service Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Arapahoe County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Service Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Service Agreement.

C. **Integration.** This Service Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. **Notice.** Unless otherwise provided in this Service Agreement, any notice under this Service Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the City:

If to Contractor:

City of Cherry Hills Village Attn: City Manager 2450 E. Quincy Avenue Cherry Hills Village, Colorado 80113	DebtBook Attn: Legal Department PO Box 667950 Charlotte, NC 28266
With Copy to: Cherry Hills Village City Attorney Michow Guckenberger McAskin LLP 5299 DTC Boulevard, Suite 300 Greenwood Village, Colorado 80111	With Copy to:

E. **Severability.** If any provision of this Service Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. **Modification.** This Service Agreement may only be modified upon written agreement signed by the Parties.

G. **Assignment.** Neither this Service Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. **Affirmative Action.** The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. **Governmental Immunity.** The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Service Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental

Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended ("CGIA"), or otherwise available to the City and its officers or employees.

J. Rights and Remedies. The rights and remedies of the City under this Service Agreement are in addition to any other rights and remedies provided by law. The expiration of this Service Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Binding Effect. The Parties agree that this Service Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XI shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Service Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Service Agreement. Any third party receiving a benefit from this Service Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Service Agreement.

O. Attorneys' Fees. If the Contractor breaches this Service Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Service Agreement.

P. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XI.A (Governing Law and Venue), XI.J (Rights and Remedies), XI.K (Annual Appropriation), XI.N (Release of Information), XI.O (Attorneys' Fees), and XI.Q (Service Agreement Controls) shall survive the expiration or termination of this Service Agreement. Any additional terms and conditions of the Service Agreement that require continued performance, compliance, or effect beyond the termination date of the Service Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

Q. Service Agreement Controls. In the event a conflict exists between this Service Agreement and any term in any exhibit attached or incorporated into this Service Agreement, the terms in this Service Agreement shall supersede the terms in such exhibit.

R. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or

failure of performance of, any covenant or promise contained in this Service Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Service Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

S. Protection of Personal Identifying Information. If the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party services providers.

T. Authority. The individuals executing this Service Agreement represent that they are expressly authorized to enter into this Service Agreement on behalf of the City of Cherry Hills Village and the Contractor and bind their respective entities.

U. Counterparts. This Service Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

V. Web Accessibility Compliance Requirements. Contractor agrees to provide Services in a manner that ensures the City's full compliance with applicable web accessibility requirements set forth in C.R.S. § 24-34-802 and associated regulations, as may be amended from time to time.

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SIGNATURE PAGES FOLLOW

THIS SERVICE AGREEMENT is executed and made effective as provided above.

**CITY OF CHERRY HILLS VILLAGE,
COLORADO**

By: Kathleen Brown

Printed Name: Kathleen Brown

Title: Mayor

Date of execution: 09/17/24

ATTEST:

Laura Gillespie
Laura Gillespie, City Clerk

APPROVED AS TO FORM (excluding exhibits):

Kathie Guckenberger
Kathie Guckenberger, City Attorney

CONTRACTOR:

By: Adam

Printed Name: E. Tyne Temo

Title: CEO

Date of execution: 9/18/2024

North Carolina
STATE OF ~~COLORADO~~)
COUNTY OF Mecklenburg) ss.

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this 23 day of September, 2024, by Erin K. Corcoran as Executive Assistant of Fifth Asset, Inc. d/b/a DebtBook a C-Corp a

My commission expires: 8/20/2029

(SEAL)



Erin K. Corcoran
Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))

EXHIBIT A
ORDER FORM

Fifth Asset, Inc., d/b/a DebtBook ("**DebtBook**") is pleased to provide the customer executing below ("**Customer**") with the Services subject to the terms established in this Order Form, including DebtBook's pricing document attached as **Attachment 1** and incorporated herein by this reference (the "**DebtBook Quote**").

The Services are subject to DebtBook's General Terms & Conditions, which have been provided to Customer (the "**Terms & Conditions**"), the Incorporated Documents referenced in the Terms & Conditions, and any additional terms set forth in **Attachment 2** to this Order Form (the "**Customer Terms**"), which, together with this Order Form and any other Order Form in effect from time to time, constitute the "**Agreement**" between the parties. The Agreement supersedes any prior discussion or representations regarding Customer's purchase and use of the Products and Services described in this Order Form.

Each capitalized term used but not defined in this Order Form has the meaning given in the Terms & Conditions.

Effective Date; Initial Term. The Effective Date of this Order Form will be the date indicated beneath the Customer's signature below unless a specific Effective Date is set forth in the Customer Terms. This Order Form will remain in effect for the Initial Term indicated in the DebtBook Quote.

Services. The DebtBook Quote sets forth the Services to be provided to Customer under this Order Form, including the specific Products to be provided to Customer through its access to the Application Services.

Fees. DebtBook will charge Customer a recurring Subscription Fee as set forth in the DebtBook Quote for Customer's access to the Onboarding Services, the Application Services, and the Support Services. To the extent applicable, DebtBook will also charge Customer an Implementation Fee as set forth in the DebtBook Quote for the Premium Implementation Services.


Billing. Unless otherwise provided in the Customer Terms, (1) all Fees will be due and payable annually and subject to the payment terms set forth in the Terms & Conditions, and (2) each invoice will be emailed to Customer's billing contact indicated in the DebtBook Quote.

Notices. Any Notice delivered under the Agreement will be delivered, if to the Customer, to the address indicated in the DebtBook

Quote and, if to DebtBook, the address below DebtBook's signature below.

Authority; Execution. Each of the undersigned represents that (1) they are authorized to execute and deliver this Order Form on behalf of their respective party, (2) they are authorized to bind their respective party to the terms of the Agreement, and (3) if Customer is a Government Entity, sufficient funds have been appropriated and are available to pay any Fees due under the Agreement in Customer's current fiscal year. This Order Form and any other documents executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. If permitted by applicable law, electronic signatures may be used for the purpose of executing this Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.

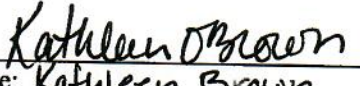
FIFTH ASSET, INC., D/B/A
DEBTBOOK

By: 
Name: TYLER TRANOT
Title: CEO

Notice Address

PO Box 667950
Charlotte, NC 28266
Attention: Chief Operating Officer
legal@debtbook.com

CHERRY HILLS VILLAGE, CO

By: 
Name: Kathleen Brown
Title: Mayor

Date: 9/17/24

Purchase Order Required:

Yes ☐ No ☐

Attachment 1
DebtBook Quote

Cherry Hills Village, CO

Cherry Hills Village, CO

Doug Farmen

Director of Finance and Administration

dfarmen@cherryhillsvillage.com

303-783-2730

Quote created: June 26, 2024

Quote expires: September 25, 2024

Quote created by: Edgar Guilfuchi

edgar.guilfuchi@debtbook.com

Additional Comments:

The Initial Term of this Order Form is 3 years. During each year of the Initial Term, the Subscription Fee will increase by 5%. The Application Services purchased under this Order Form include the Products listed below. The Services include the Application Services, the Onboarding Services, the Support Services, and the Implementation Services option indicated below. All invoices will be emailed to the Customer's billing contact at the following address: Doug Farmen (dfarmen@cherryhillsvillage.com).

Year 1: \$8,000 + 1,500 (premium fee)

Year 2: \$8,400

Year 3: \$8,820

Total Contract Value: \$26,720

Products & Services

Item & Description	SKU	Quantity	Unit Price	Total
2023 Tier 1 – Lease & Subscription DebtBook's lease management and SBITA management software-as-a-service application provided, if applicable, to Customer through access to the Application Services	23LSST1-2	1	\$8,000.00 / year	\$8,000.00 / year for 1 year
2023 Tier 1 – Lease & Subscription Premium Implementation The additional implementation services provided to Customer on an annual basis, including tailored implementation support, review of Application Obligations, and entry of relevant Customer Data.	23LSPI1-2	1	\$1,500.00	\$1,500.00
			Total	\$9,500.00

Edgar Guilfuchi
edgar.guilfuchi@debtbook.com

Attachment 2
Customer Terms

The additional terms set forth below constitute "**Customer Terms**" for all purposes of the Agreement, apply to the Products and Services purchased under this Order Form.

DEBTBOOK'S GENERAL TERMS & CONDITIONS

Please carefully read these General Terms and Conditions (these "**Terms & Conditions**") which govern Customer's access and use of the Services described in the Order Form.

By executing the Order Form and using any of the Services, Customer agrees to be bound by these Terms.

1. Definitions.

"**Aggregated Statistics**" means data and information related to Customer's use of the Services that is used by DebtBook in an aggregate and anonymized manner, including statistical and performance information related to the Services.

"**Agreement**" means, collectively and to the extent applicable, the Order Form, any Customer Terms, these Terms & Conditions, and the Incorporated Documents, in each case as may be amended from time to time in accordance with their terms.

"**Application Obligations**" means, collectively, each contractual or financial obligation or agreement managed by Customer using the Products made available to Customer through the Application Services.

"**Application Services**" means the Products and other application-based services that DebtBook offers to Customer through access to the DebtBook application. The specific Products offered to Customer as part of the Application Services are limited to those Products expressly described in any Order Form then in effect.

"**Appropriate Security Measures**" means, collectively, commercially reasonable technical and physical controls and safeguards intended to protect Customer Data against destruction, loss, unauthorized disclosure, or unauthorized access by employees or contractors employed by DebtBook.

"**Authorized User**" means any of Customer's employees, consultants, contractors, or agents who are authorized by Customer to access and use any of the Services.

"**Customer**" means the person or entity purchasing the Services as identified in the Order Form.

"**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is transmitted by or on behalf of Customer or an Authorized User through the Services.

"**Customer Terms**" means the terms set forth in or otherwise identified and incorporated into the Order Form. For the avoidance of doubt, "Customer Terms" does not include any purchase order or

similar document generated by Customer unless such document is expressly identified and incorporated into the Order Form.

“DebtBook” means Fifth Asset, Inc., d/b/a DebtBook, a Delaware corporation, and its permitted successor and assigns.

“DebtBook IP” means (1) the Products, Services, Documentation, and Feedback, including all ideas, concepts, discoveries, strategies, analyses, research, developments, improvements, data, materials, products, documents, works of authorship, processes, procedures, designs, techniques, inventions, and other intellectual property, whether or not patentable or copyrightable, and all embodiments and derivative works of each of the foregoing in any form and media, that are developed, generated or produced by DebtBook arising from or related to the Product, Services, Documentation, or Feedback; and (2) any intellectual property provided to Customer or any Authorized User in connection with the foregoing other than Customer Data.

“DebtBook Quote” means any pricing document identified and incorporated into each Order Form that may establish the Products, Services, Term, payment terms, and other relevant details applicable to each Customer purchase of Products and Services under such Order Form.

“Documentation” means DebtBook’s end user documentation and content, regardless of media, relating to the Products or Services made available from time to time on DebtBook’s website at <https://support.debtbook.com>.

“Feedback” means any comments, questions, suggestions, or similar feedback transmitted in any manner to DebtBook, including suggestions relating to features, functionality, or changes to the DebtBook IP.

“Guided Implementation Services” means DebtBook’s standard Implementation Services option, including basic implementation support, guidance, and training.

“Governing State” means, if Customer is a Government Entity, the state in which Customer is located. If Customer is not a Government Entity, “Governing State” means the State of North Carolina.

“Government Entity” means any unit of state or local government, including states, counties, cities, towns, villages, school districts, special purpose districts, and any other political or governmental subdivisions and municipal corporations, and any agency, authority, board, or instrumentality of any of the foregoing.

“Implementation Services” means DebtBook’s Guided Implementation Services or its Premium Implementation Services, in each case as requested by Customer and as provided to Customer on an annual basis.

“Incorporated Documents” means, collectively, the Privacy Policy, the SLA, and the Usage Policy, as each may be updated from time to time in accordance with their terms. The Incorporated Documents, as amended, are incorporated into these Terms & Conditions by this reference. Current versions of the Incorporated Documents are available at <https://www.debtbook.com/legal>.

“Initial Term” means the Initial Term established in the Order Form.

“Onboarding Services” means onboarding services, support, and training as required to make the Application Services available to Customer during the Initial Term.

“Order Form” means each order document (including, if applicable, any DebtBook Quote incorporated therein by reference) duly authorized by Customer and DebtBook for the purchase of any Products or Services in effect from time to time, as each such Order Form may be amended, modified, or replaced in accordance with its terms and these Terms & Conditions.

“Premium Implementation Services” means DebtBook’s premium Implementation Services option, including implementation support, guidance, and training, review of Application Obligations, and entry of relevant Customer Data.

“Pricing Tier” means, if applicable, Customer’s pricing tier for each Product as of the date of determination.

“Privacy Policy” means, collectively, DebtBook’s privacy policy and any similar data policies generally applicable to all users of the Application Services, in each case as posted to DebtBook’s website and as updated from time to time in accordance with their terms.

“Products” means, collectively, any products DebtBook may offer to Customer from time to time through the Application Services, in each case as established in any Order Form then in effect.

“Renewal Term” means any renewal term established in accordance with the terms of the Agreement.

“Services” means, collectively, the Application Services, the Onboarding Services, the Implementation Services, and the Support Services. For the avoidance of doubt, “Services” includes the underlying Products made available to Customer through access to the Application Services.

“SLA” means the Service Level Addendum generally applicable to all users of the Application Services, as posted to DebtBook’s website and as updated from time to time in accordance with its terms.

“Support Services” means the general maintenance services and technical support provided in connection with the Application, as more particularly described in the SLA.

“Term” means, collectively, the Initial Term and, if applicable, each successive Renewal Term.

“Usage Policy” means, collectively, DebtBook’s acceptable usage policy, any end user licensing agreement, or any similar policy generally applicable to all end users accessing the Application Services, in each case as posted to DebtBook’s website and as updated from time to time in accordance with its terms.

Each capitalized term used but not otherwise defined in these Terms & Conditions has the meaning given to such term in the applicable Order Form.

2. Access and Use.

(a) Provision of Access. Subject to the terms and conditions of the Agreement, DebtBook grants Customer and Customer’s Authorized Users a non-exclusive, non-transferable (except as

permitted by these Terms) right to access and use the Application Services during the Term, solely for Customer's internal use and for the Authorized Users' use in accordance with the Agreement. DebtBook will provide to Customer the necessary passwords and network links or connections to allow Customer to access the Application Services.

(b) Documentation License. Subject to the terms and conditions of the Agreement, DebtBook grants to Customer and Customer's Authorized Users a non-exclusive, non-sublicensable, non-transferable (except as permitted by these Terms) license to use the Documentation during the Term solely for Customer's and its Authorized User's internal business purposes in connection with its use of the Services.

(c) Customer Responsibilities. Customer is responsible and liable for its Authorized Users' access and use of the Services and Documentation, regardless of whether such use is permitted by the Agreement. Customer must use reasonable efforts to make all Authorized Users aware of the provisions applicable to their use of the Services, including the Incorporated Documents.

(d) Use Restrictions. Customer may not at any time, directly or indirectly through any Authorized User, access or use the Services in violation of the Usage Policies, including any attempt to (1) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (2) sell, license, or otherwise transfer or make available the Services or Documentation except as expressly permitted by the Agreement; or (3) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part. Customer will not knowingly transmit any personally identifiable information to DebtBook or any other third-party through the Services.

(e) Suspension. Notwithstanding anything to the contrary in the Agreement, DebtBook may temporarily suspend Customer's and any Authorized User's access to any or all of the Services if: (1) Customer is more than 45 days late in making any payment due under, and in accordance with, the terms of the Agreement, (2) DebtBook reasonably determines that (A) there is a threat or attack on any of the DebtBook IP; (B) Customer's or any Authorized User's use of the DebtBook IP disrupts or poses a security risk to the DebtBook IP or to any other customer or vendor of DebtBook; (C) Customer, or any Authorized User, is using the DebtBook IP for fraudulent or other illegal activities; or (D) DebtBook's provision of the Services to Customer or any Authorized User is prohibited by applicable law; or (3) any vendor of DebtBook has suspended or terminated DebtBook's access to or use of any third-party services or products required to enable Customer to access the Services (any such suspension, a "**Service Suspension**"). DebtBook will use commercially reasonable efforts to (i) provide written notice of any Service Suspension to Customer, (ii) provide updates regarding resumption of access to the Services, and (iii) resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. DebtBook is not liable for any damage, losses, or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Statistics. Notwithstanding anything to the contrary in the Agreement, DebtBook may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between DebtBook and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by DebtBook. DebtBook may compile Aggregated Statistics based on Customer Data input into the Services. DebtBook may (1) make Aggregated Statistics publicly available in compliance with applicable law, and (2) use Aggregated Statistics as permitted under applicable law so long as, in each case, DebtBook's use of any Aggregated

Statistics does not identify Customer or disclose Customer's Confidential Information.

3. Services and Support.

(a) Services Generally. Subject to the terms of the Agreement, DebtBook will grant Customer access to the Application Services during the Initial Term and, if applicable, each subsequent Renewal Term. As part of the onboarding process, DebtBook will provide Customer with the Onboarding Services and the level of Implementation Services indicated in the Order Form. DebtBook will provide Customer with the Support Services throughout the Term.

(b) Implementation Services. DebtBook will provide Implementation Services for each Product to the extent indicated for such Product in the applicable Order Form. Unless DebtBook has agreed to provide Premium Implementation Services for any such Product in accordance with this subsection, DebtBook will provide Customer with Guided Implementation Services for such Product at no additional charge. At Customer's request, DebtBook will identify in an Order Form those Products for which DebtBook will provide Premium Implementation Services. For each Product indicated for Premium Implementation Services, DebtBook will charge Customer a one-time Fee for the Premium Implementation Services as set forth in such Order Form. Customer agrees to cooperate in good faith and to respond in a timely manner to any reasonable request for data or information DebtBook may require to complete the Implementation Services. DebtBook is not obligated to provide any Implementation Services after the date that is 180 days after the Effective Date of the Order Form pursuant to which DebtBook is providing such Implementation Services.

(c) Service Levels and Support. Subject to the terms and conditions of the Agreement, DebtBook will make the Application Services and Support Services available in accordance with the SLA.

4. Fees and Payment.

(a) Fees. Customer will pay DebtBook the fees set forth in each Order Form (the "Fees"). DebtBook will invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in each Order Form. Customer must pay all Fees in US dollars within 30 days of its receipt of a valid invoice unless other payment terms are set forth in the Customer Terms. If Customer is a Government Entity, then Customer's obligation to pay any Fees under the Agreement is subject in all respects to the requirements and limitations of the Governing State's prompt payment act, as amended. Except as expressly provided in the Agreement, DebtBook does not provide refunds of any paid Fees. Unless otherwise provided in the Customer Terms, and to the extent permitted by applicable law, if Customer fails to make any payment when due, DebtBook may, without limiting any of its other rights, charge interest on the past due amount at the lowest of (1) the rate of 1.5% per month, (2) the rate established in any Customer Term, or (3) the maximum rate permitted under applicable law.

(b) Taxes. All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Unless Customer is exempt from making any such payment under applicable law or regulation, Customer is responsible for all applicable sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer under the Agreement, other than any taxes imposed on DebtBook's income.

5. Confidential Information.

(a) From time to time during the Term, either party (the “**Disclosing Party**”) may disclose or make available to the other party (the “**Receiving Party**”) information about the Disclosing Party’s business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether in written, electronic, or other form or media, that is marked, designated, or otherwise identified as “confidential”, or which a reasonable person would understand to be confidential or proprietary under the circumstances (collectively, “**Confidential Information**”). For the avoidance of doubt, DebtBook’s Confidential information includes the DebtBook IP and the Application Services source code and specifications. As used in the Agreement, “Confidential Information” expressly excludes any information that, at the time of disclosure is (1) in the public domain; (2) known to the receiving party at the time of disclosure; (3) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (4) independently developed by the Receiving Party.

(b) To the extent permitted by applicable law, the Receiving Party will hold the Disclosing Party’s Confidential Information in strict confidence and may not disclose the Disclosing Party’s Confidential Information to any person or entity, except to the Receiving Party’s employees, officers, directors, agents, subcontractors, financial advisors, and attorneys who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under the Agreement or otherwise in connection with the Services. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order must first give written notice to the other party; or (2) to establish a party’s rights under the Agreement, including to make required court filings.

(c) On the expiration or termination of the Agreement, the Receiving Party must promptly return to the Disclosing Party all copies of the Disclosing Party’s Confidential Information, or destroy all such copies and, on the Disclosing Party’s request, certify in writing to the Disclosing Party that such Confidential Information has been destroyed.

(d) Each party’s obligations under this Section are effective as of the Effective Date and will expire three years from the termination of the Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(e) Notwithstanding anything in this Section to the contrary, if Customer is a Government Entity, then DebtBook expressly agrees and understands that Customer’s obligations under this Section are subject in all respects to, and only enforceable to the extent permitted by, the public records laws, policies, and regulations of the Governing State.

6. Intellectual Property.

(a) DebtBook IP. As between Customer and DebtBook, DebtBook owns all right, title, and interest, including all intellectual property rights, in and to the DebtBook IP.

(b) Customer Data. As between Customer and DebtBook, Customer owns all right, title, and

interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to DebtBook a non-exclusive, royalty-free, worldwide license to reproduce, distribute, sublicense, modify, prepare derivative works based on, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary or appropriate for DebtBook to provide the Services to Customer.

(c) Effect of Termination. Without limiting either party's obligations under Section 5 of the Agreement, DebtBook, at no further charge to Customer, will (1) provide Customer with temporary access to the Application Services for up to 60 days after the termination of the Agreement to permit Customer to retrieve its Customer Data in a commercially transferrable format and (2) use commercially reasonable efforts to assist Customer, at Customer's request, with such retrieval. After such period, DebtBook may destroy any Customer Data in accordance with DebtBook's data retention policies.

7. Limited Warranties.

(a) Functionality & Service Levels. During the Term, the Application Services will operate in a manner consistent with general industry standards reasonably applicable to the provision of the Application Services and will conform in all material respects to the Documentation and service levels set forth in the SLA when accessed and used in accordance with the Documentation. Except as expressly stated in the SLA, DebtBook does not make any representation, warranty, or guarantee regarding availability of the Application Services, and the remedies set forth in the SLA are Customer's sole remedies and DebtBook's sole liability under the limited warranty set forth in this paragraph.

(b) Security. DebtBook has implemented Appropriate Security Measures and has made commercially reasonable efforts to ensure its licensors and hosting providers, as the case may be, have implemented Appropriate Security Measures intended to protect Customer Data.

(c) EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, DEBTBOOK IP IS PROVIDED "AS IS," AND DEBTBOOK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DEBTBOOK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, DEBTBOOK MAKES NO WARRANTY OF ANY KIND THAT THE DEBTBOOK IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

(d) DebtBook exercises no control over the flow of information to or from the Application Service, DebtBook's network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet. Although DebtBook will use commercially reasonable efforts to take all actions DebtBook deems appropriate to remedy and avoid such events, DebtBook cannot guarantee that such events will not occur. ACCORDINGLY, DEBTBOOK DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATING TO ALL SUCH EVENTS, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ANY

OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF A THIRD PARTY.

8. Indemnification.

(a) DebtBook Indemnification.

(i) DebtBook will indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) (collectively, "**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Application Services, or any use of the Application Services in accordance with the Agreement, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies DebtBook in writing of the Third-Party Claim, reasonably cooperates with DebtBook in the defense of the Third-Party Claim, and allows DebtBook sole authority to control the defense and settlement of the Third-Party Claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit DebtBook, at DebtBook's sole expense and discretion, to (A) modify or replace the DebtBook IP, or component or part of the DebtBook IP, to make it non-infringing, or (B) obtain the right for Customer to continue use. If DebtBook determines that neither alternative is reasonably available, DebtBook may terminate the Agreement in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, so long as, in each case, DebtBook promptly refunds or credits to Customer all amounts Customer paid with respect to the DebtBook IP that Customer cannot reasonably use as intended under the Agreement.

(iii) DebtBook's indemnification obligation under this Section will not apply to the extent that the alleged infringement arises from Customer's use of the Application Services in combination with data, software, hardware, equipment, or technology not provided or authorized in writing by DebtBook or modifications to the Application Services not made by DebtBook.

(b) Sole Remedy. SECTION 8(a) SETS FORTH CUSTOMER'S SOLE REMEDIES AND DEBTBOOK'S SOLE LIABILITY FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT WILL DEBTBOOK'S LIABILITY UNDER SECTION 8(a) EXCEED \$1,000,000.

(c) Customer Indemnification. Customer will indemnify, hold harmless, and, at DebtBook's option, defend DebtBook from and against any Losses resulting from any Third-Party Claim that the

(d) Customer Data, or any use of the Customer Data in accordance with the Agreement, infringes or misappropriates such third party's intellectual property rights and any Third- Party Claims based on Customer's or any Authorized User's negligence or willful misconduct or use of the Services in a manner not authorized by the Agreement. DEBTBOOK EXPRESSLY AGREES THAT THIS PROVISION WILL NOT APPLY TO ANY CUSTOMER THAT IS A GOVERNMENT ENTITY TO THE EXTENT SUCH INDEMNIFICATION OBLIGATIONS ARE PROHIBITED UNDER APPLICABLE LAW.

9. Limitations of Liability. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL THE AGGREGATE LIABILITY OF DEBTBOOK ARISING OUT OF OR RELATED TO THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO DEBTBOOK UNDER THE AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION DO NOT APPLY TO CLAIMS PURSUANT TO SECTION 8.

10. Term and Termination.

(a) Term. Except as the parties may otherwise agree in the Customer Terms, or unless terminated earlier in accordance with the Agreement:

(i) the Agreement will automatically renew for successive 12-month Renewal Terms unless either party gives the other party written notice of non-renewal at least 30 days before the expiration of the then-current term; and

(ii) each Renewal Term will be subject to the same terms and conditions established under the Agreement, with any Fees determined in accordance with DebtBook's then-current pricing schedule, as provided to Customer at least 60 days before the expiration of the then-current term.

(b) Termination. In addition to any other express termination right set forth in the Customer Terms:

(i) DebtBook may terminate the Agreement immediately if Customer breaches any of its obligations under Section 2 or Section 5;

(ii) Customer may terminate the Agreement in accordance with the SLA;

(iii) either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;

(iv) if Customer is a Government Entity and sufficient funds are not appropriated to pay for the Application Services, then Customer may terminate the Agreement at any time without penalty following 30 days prior written notice to DebtBook; or

(v) either party may, to the extent permitted by law, terminate the Agreement,

effective immediately on written notice to the other party, if the other party becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law.

(c) Survival. Only this Section and Section 1 (Definitions), Sections 4 through 6 (Fees; Confidential Information; Intellectual Property), Section 7(c) (Disclaimer of Warranties), and Sections 8, 9 and 12 (Indemnification; Limitations of Liability; Miscellaneous) will survive any termination or expiration of the Agreement.

11. Independent Contractor. The parties to the Agreement are independent contractors. The Agreement does not create a joint venture or partnership between the parties, and neither party is, by virtue of the Agreement, authorized as an agent, employee, or representative of the other party.

12. Miscellaneous.

(a) Governing Law; Submission to Jurisdiction. The Agreement will be governed by and construed in accordance with the laws of the Governing State, without regard to any choice or conflict of law provisions, and any claim arising out of the Agreement may be brought in the state or federal courts located in the Governing State. Each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding,

(b) Entire Agreement; Order of Precedence. The Order Form, the Customer Terms, the Terms & Conditions, and the Incorporated Documents constitute the complete Agreement between the parties and supersede any prior discussion or representations regarding Customer's purchase and use of the Services.

To the extent any conflict exists between the terms of the Agreement, the documents will govern in the following order or precedence: (1) the Customer Terms, (2) Order Form, (3) the Terms & Conditions, and (4) the Incorporated Documents. No other purchasing order or similar instrument issued by either party in connection with the Services will have any effect on the Agreement or bind the other party in any way.

(c) Amendment; Waiver. No amendment to the Order Form, the Terms & Conditions, or the Customer Terms will be effective unless it is in writing and signed by an authorized representative of each party. DebtBook may update the Incorporated Documents from time-to-time following notice to Customer so long as such updates are generally applicable to all users of the Services. No waiver by any party of any of the provisions of the Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, delay in exercising, or any partial exercise of any rights, remedy, power, or privilege arising from the Agreement will in any way waive or otherwise limit the future exercise of any right, remedy, power, or privilege available under the Agreement.

(d) Notices. All notices, requests, consents, claims, demands, and waivers under the Agreement (each, a "**Notice**") must be in writing and addressed to the recipients and addresses set forth for each party on the Order Form (or to such other address as DebtBook or Customer may designate from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of

transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid).

(e) Force Majeure. In no event will either party be liable to the other party, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including acts of God, flood, fire, earthquake, pandemic, epidemic, problems with the Internet, shortages in materials, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(f) Severability. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) Assignment. Either party may assign its rights or delegate its obligations, in whole or in part, on 30 days prior written notice to the other party, to an affiliate or an entity that acquires all or substantially all of the business or assets of such party, whether by merger, reorganization, acquisition, sale, or otherwise. Except as stated in this paragraph, neither party may assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed. The Agreement is binding on and inures to the benefit of the parties and their permitted successors and assigns.

(h) Marketing. Neither party may issue press releases related to the Agreement without the other party's prior written consent. Unless otherwise provided in the Customer Terms, either party may include the name and logo of the other party in lists of customers or vendors.

(i) State-Specific Certifications & Agreements. If Customer is a Government Entity and to the extent required under the laws of the Governing State, DebtBook hereby certifies and agrees as follows:

(i) DebtBook has not been designated by any applicable government authority or body as a company engaged in the boycott of Israel under the laws of the Governing State;

(ii) DebtBook is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Agreement by any governmental department or agency of the Governing State;

(iii) DebtBook will not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state, or local law;

(iv) DebtBook will verify the work authorization of its employees using the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security and, if applicable, will require its subcontractors to do the same; and

(v) Nothing in the Agreement is intended to act as a waiver of immunities that

Customer has as a matter of law as a Government Entity under the laws of the Governing State, including but not limited to sovereign or governmental immunity, public officers or official immunity or qualified immunity, to the extent Customer is entitled to such immunities.

(j) Execution. Any document executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.