

**FIFTH AMENDMENT to CONTRACT No. 30003085
CONTRACT FOR PROCUREMENT, LICENSING, AND MAINTENANCE
OF A WEB-BASED SOFTWARE APPLICATION**

I. GENERAL INFORMATION

This Fifth Amendment ("Amendment") to Contract No. 30003085 is effective November 15, 2018 ("Effective Date") by and between NAVEX Global, Inc. ("NAVEX") and the City of Portland ("the City") (collectively "Parties").

II. RECITALS

WHEREAS, NAVEX (as successor to EthicsPoint, Inc.) and the City entered into Contract No. 30003085 (formerly Contract No. 31000104) dated November 15, 2009 ("Contract"), wherein NAVEX agreed to provide certain Services in accordance with the Contract.

WHEREAS, it is the mutual intent of the Parties to amend the Contract as set forth below.

NOW, THEREFORE, in consideration of the agreements, covenants, terms and conditions herein contained and other consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

III. AGREEMENT

1. The term of the Contract shall be extended for one (1) additional twelve (12)-month term (a "Renewal Term") beginning November 15, 2018, and terminating **November 14, 2019**. Following the 2018-2019 Renewal Term (as defined herein), the Contract and the Services provided thereunder shall not be renewed again because the Contract will reach the ten (10)-year maximum term permissible in Portland City Charter on November 14, 2019. Annual fees for the Renewal Term are **\$4,181.80**. Annual Fees will be fixed through the 2018-2019 Renewal Term.
2. Effective November 15, 2018, the price per Report shall be increased by \$1.39, from \$46.40 per Report to **\$47.79** per Report up to and including seventy-five (75) Reports, and the annual fee for Portal Page Maintenance shall be increased by \$17.40, from \$580.00 to **\$597.40**. The price per Report (the "overage rate") for any Report in excess of the seventy-five (75) Reports shall be **\$55.00** per Report.
3. All Fees for the "2018-2019 Renewal Term" (defined as November 15, 2018, to November 14, 2019) shall be invoiced to the City at least thirty (30) calendar days prior to the commencement of the 2018-2019 Renewal Term and shall be due on or before November 15, 2018.
4. The not-to-exceed value of the Contract shall be increased by \$5,000.00, from \$42,120.00 to \$47,120.00
5. Notwithstanding anything contrary in the Contract, in the event that the City incurs additional fees during any Renewal Term in excess of the not-to-exceed value of the Contract set forth herein, the Parties agree to amend the Contract to increase the not-to-exceed value to the extent required to cover the additional fees.
6. The following text REPLACES the existing text on page one of the Contract:

Contractor Contact: Richard Stockwell

City of Portland Contact: Fiona Howell Earle

5500 Meadows Road, Suite 500

Principal Management Auditor, 1221 SW 4th Ave Room 310

Lake Oswego, Or 97035

Portland, Or 97204

TEL: 1 (866) 297-0224

TEL: (503) 823-3539

EMAIL: rstockwell@navexglobal.com

EMAIL: Fiona.Earle@portlandoregon.gov

7. The following text REPLACES the existing text for the definition of "Authorized Officer" in Section 1 Definitions:

"Authorized Officer" means the City Auditor. The City Auditor can make critical decisions regarding Contractor Reports and system administration. The City Auditor has the ability to review the Administrator's audit trail and can remove the current Administrator and appoint a new one. The responsibilities of the Administrator will fall to the Director of Audit Services in the event of the Administrator's absence.

8. The following text REPLACES the existing text in the definition of " City Confidential Information " in Section1 Definitions:

"City Confidential Information" means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 to 646A.628); (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.

9. The following text REPLACES the existing text for the definition of "City Users" in Section1 Definitions:

"City User" means any person employed or working on behalf of the City Auditor's Office, its Divisions, Directors, and any person or entity under contract or authorized by the City to provide the City Auditor with services and to use the City's resources in whole or in part, in the course of assisting the City Auditor's Office.

10. The following text REPLACES the existing text for the definition of "Purchasing Agent" in Section1 Definitions:

"Purchasing Agent" means the City Auditor or the individual to whom the City Auditor has delegated authority to act on behalf of the City Auditor's Office. The Purchasing Agent is authorized to enter into contractual agreements on behalf of the City Auditor's Office.

11. The following text REPLACES the existing text in the sentence of the definition of " Report " in Section1 Definitions:

"Report" means: (a) Reported Information submitted by a Reporter on Contractor's website or through Contractor's contact center; (b) any communications directed by City to any such Reporter via Contractor's website; (c) any response by any such Reporter to City communications specified in (b); and (d) any investigative notes, final resolution summaries or Report summaries input by the City Reporting Hierarchy into the Application. Neither a redirect to another City point of contact, by Contractor's Contact Center, or follow-up communications with a Reporter regarding a specific previously submitted Report, shall be considered a new Report; these shall be excluded from the annual Report count of 75.

12. The following text REPLACES the existing text in Section 2.10 Written Notifications:

All written notifications and written Amendments shall be sent to the following:

<p>For City of Portland: Name: Fiona Howell Earle Title: Principal Management Auditor Address: 1221 SW 4th Avenue, Room 310 City, State: Portland, OR. 97204</p> <p>Copy to: Kari Guy Title: Director of Audit Services Address: 1221 SW 4th Avenue, Room 310 City, State: Portland, OR. 97204</p>	<p>For Contractor: Name: Attn: Legal Department Title: Address: 5500 Meadows Road, Suite 500 City, State: Lake Oswego, OR 97035</p>
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13. The following text REPLACES the existing text in Section 2.17.5.3 System Compatible:

Contractor shall ensure its software is compatible with the City's information technology systems to allow the Services provided to continue.

14. Section 2.19.3 shall be deleted and replaced with the following text:

2.19.3 The limitation of liability and damages set forth in Sections 2.19.2 does not apply to: (a) claims, liabilities, and expenses arising from either Party's gross negligence, bad faith or intentional misconduct or (b) either Party's

indemnification obligations set forth in the Contract or section 2.18 (Indemnification) above; or (c) EthicsPoint's breach of the obligations set forth in the Contract or Section 2.29 (Confidentiality) of the Agreement.

15. Section 2.19 Force Majeure shall be deleted and replaced with the following text:

2.19A Force Majeure

2.19A.1 In the event that either Party is unable to perform any of its obligations under this Contract (including any Task/Change Order(s) or loss of any Software licensed or developed hereunder) due to natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, this Contract and/or any affected Task/Change Order shall immediately be suspended.

2.19A.2 If the period of nonperformance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Task/Change Order or any license granted hereunder.

2.19A.3 If delay in delivery due to a Force Majeure Event does not exceed thirty (30) days, such service disruptions shall automatically extend the term expiration date for a period equal to the duration of such events; any service Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) days. In lieu of extending the term expiration date, the Contractor may also credit the City for a prorated amount of the annual license agreement.

2.19A.4 If delay in delivery due to Force Majeure Event is longer than thirty (30) days, the City shall have the right to terminate this Contract, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this Section. In lieu of termination, the City may choose to receive a credit in the amount of the prorated fees for the days of service disruption.

2.19A.5 If this Contract involves the acquisition of Software that contains personally identifiable information and/or processes credit card transactions, a security breach of Contractor's system shall not be considered a Force Majeure Event.

16. The following text REPLACES all text that states "Waived by City Attorney" in Section 2.20.4:

Waived by City Auditor or designee.

17. The following text shall be added to Section 2.29.5 Public Records Request:

2.29.5.1 In the event that Contractor receives a public records request pursuant to ORS 192.410 et seq., Contractor shall forward the request to City Auditor within one (1) Business Day.

18. The following text REPLACES the existing text in Section 3.5.2:

City of Portland, Bureau of Technology Services Security Standards. If applicable Consultants must comply with Technology Services, Information Security Administrative Rules 2.01, 2.02, 2.08, 2.12, 2.15, and 2.18. These rules are located at: <https://www.portlandoregon.gov/citycode/26913>

19. The following text REPLACES the existing text in Section 4.13 Support and Escalation Protocol:

(d) If City feels its request has not been cared for in an appropriate and timely manner, City may contact Steve Chapman - Director, Professional Services via email at schapman@ethicspoint.com or direct dial 866-297-0224 Ext. 1302.

20. The following text REPLACES the existing text in Section 4.13 Support and Escalation Protocol:

(f) If City feels its request has not been cared for in an appropriate and timely manner post system Implementation, City may contact Customer Support via email at support.navexglobal.com or by phone at: 1 (866) 297-0224, select option 3.

21. The following text REPLACES the existing text in Section I. CONTACT INFORMATION in Exhibit A, *Statement of Work No. 2, Pricing & Terms of Services*:

City Administrator – Name:

Fiona Howell Earle

City Administrator – Title:

Principal Management Auditor

City Administrator – Telephone
City Administrator – e-mail:

503-823-3539
Fiona.Earle@portlandoregon.gov

22. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties. The Parties may execute this Amendment by an exchange of faxed, emailed, or electronically signed copies hereof, which shall be binding.

23. Each person executing this Amendment on behalf of the City and NAVEX, respectively, warrants authority to do so.

24. Except as modified herein, all terms and conditions of the Contract shall remain in full force and effect.

25. All terms, unless otherwise defined herein, shall be given the meaning ascribed to them in the Contract.

ACCEPTED BY THE CITY OF PORTLAND:

ACCEPTED BY NAVEX GLOBAL, INC.:

Signature: _____ Signature: _____

Date: _____ Date: _____

Name: _____ Name: _____

Title: City Auditor Title: _____