

**AVOLVE SOFTWARE CORPORATION**  
**Software as a Services Agreement**

This agreement ("Agreement") is made this \_\_\_\_\_ ("Effective Date") by and between Avolve Software Corporation, a Delaware corporation with offices at 4835 E. Cactus Road, Suite 420, Scottsdale, Arizona 85254, United States of America, ("Avolve" or "Contractor") and CITY OF BAKERSFIELD ("City").

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, Avolve and City agree as follows.

**SECTION A. – AVOLVE SAAS SOLUTION**

1. Avolve SAAS Solution:

- a. Use Rights. Subject to City's compliance with all the terms and conditions of this Agreement, Avolve grants to City a non-exclusive, non-transferable, non-sublicensable right during the subscription term ("Subscription Term") identified in the Implementation SOW (attached hereto as Exhibit 2) to permit Users to use the Avolve SAAS Solution identified in the Implementation SOW for City's internal business operations, solely for the specific Business Unit(s) as further set forth in the Implementation SOW. Should City desire to reorganize any such Business Unit, it shall provide Avolve written notice as soon as possible following the determination of reorganization, so that Avolve may review the planned reorganization to determine if it is consistent with the Business Unit limitation in this use rights grant and, if not, what additional fees will be required due to City's reorganization to include additional Business Units. As used in this Agreement, "User" means authorized City employees and third parties that require access to the Avolve SAAS Solution in connection with the City's internal business operations, such as the City's administrators, contractors, reviewers, and applicants. There may be different types/levels of Users for the Avolve SAAS Solution, such as administrator Users, if so identified in the Implementation SOW.
- b. Storage. The Avolve SAAS Solution will include for the initial Subscription Term the amount of storage set forth in the Implementation SOW. City acknowledges that should City exceed the included storage limits after Avolve has sent notice to City in accordance with Avolve's then-current standard storage limits and data backup practices (available upon request), additional charges will be incurred by City. Avolve shall invoice City for any such additional incurred charges, and City shall pay such invoices, in accordance with Section C of this Agreement. Avolve may, in its sole discretion, modify the amount of standard storage included at no additional charge with the Avolve SAAS Solution, with such modification to become effective upon the effective date of any renewal term provided that Avolve provides City written notice of such modification at least ninety days in advance of the expiration of the then-current Subscription Term.
- c. Restrictions on Use. City will not, and will ensure that its Users do not: (i) except as expressly stated herein, copy, reproduce, distribute, republish, download, display, host or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means, any part of Avolve SAAS Solution or any other Avolve materials; (ii) use the Avolve SAAS Solution or any other Avolve materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training); (ii) assign, sublicense, sell, lease, loan, resell, sublicense or otherwise distribute or transfer or convey the Avolve SAAS Solution or any other Avolve materials, or pledge as security or otherwise encumber City's rights under this Agreement; (iii) make any use of or perform any acts with respect to the Avolve SAAS Solution or any other Avolve materials other than as expressly permitted in accordance with the terms of this Agreement; or (iv) use the Avolve SAAS Solution components other than those specifically identified in the Implementation SOW and then only as part of Avolve SAAS Solution as a whole, even if it is also technically possible for City to access other Avolve SAAS Solution components; or (v) modify, further

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develop or create any derivative works of, disassemble, decompile, reverse engineer or otherwise attempt to obtain or perceive the source code from which any part of Avolve SAAS Solution is compiled or interpreted, or access or use Avolve SAAS Solution in order to build a similar or competitive product or service; (vi) allow use of the Avolve SAAS Solution or any other Avolve materials by anyone other than authorized Users; (vii) publish any results of benchmark tests run on Avolve SAAS Solution; (viii) unless otherwise expressly authorized in writing by Avolve, use the Avolve SAAS Solution in connection with any software product or tools, or any other software as a service not provided by Avolve; and (ix) input, upload, transmit or otherwise provide to or through Avolve SAAS Solution or any systems used by Avolve anything that is unlawful, injurious, or contains, transmits or activates any harmful code. City acknowledges that nothing herein will be construed to grant City any right to obtain or use the source code from which Avolve SAAS Solution is delivered. City shall not tamper with or attempt to disable any security device or protection used by Avolve SAAS Solution or any other Avolve materials, nor shall City damage, destroy, disrupt or otherwise impede or harm in any manner the Avolve SAAS Solution or any systems used by Avolve. City agrees to take all commercially reasonable steps to ensure that Users abide by the terms of this Agreement and expressly agrees to indemnify Avolve, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by Avolve arising from a breach by the User of the conditions of this Agreement.

- d. High-Risk Activities. The Avolve SAAS Solution is not fault-tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines or weapons systems, in which the failure of the Avolve SAAS Solution or derived binaries could lead directly to death, personal injury, or severe physical or environmental damage. The Avolve SAAS Solution is also not designed or intended for use with Federal Tax Information (FTI) as defined in the Internal Revenue Service Publication 1075 (IRS 1075) or criminal justice information ("CJI"), such as fingerprint records and criminal histories. City shall not use the Avolve SAAS Solution for any of these high-risk activities, including without limitation transmitting, storing or otherwise processing any FTI or CJI with the Avolve SAAS Solution.
- e. Project Administrator. City agrees, if not already designed in the Implementation SOW, to promptly designate in writing one person to be the City's point person responsible for all communications with Avolve (the City's "Project Administrator"). The Project Administrator is responsible for project administration duties as documented in the Avolve systems guides, statements of work, and documentation (collectively, the "Documentation"), as provided for time to time by Avolve to City.
- f. City Connection. During the Term, the City is responsible for obtaining and maintaining connection to the Avolve SAAS Solution, including the Internet connection. Avolve shall not be responsible for any inadequacy or lack of functionality of City's connection to the Avolve SAAS Solution or the inability of the City's computer, telecommunications provider, or other equipment and capabilities to access or use the Avolve SAAS Solution.
- g. Third Party Service Providers and Components. Notwithstanding anything to the contrary in this Agreement or any other documents between Avolve and City, City acknowledges and agrees as follows.
  - 1. The Avolve SAAS Solution and its component parts are protected by copyright and other propriety rights of Avolve and one or more third party software vendors (including Oracle and Open Text Corporation ("OTC")) (all such third party vendors, including without limitation Oracle and OTC, shall be referred to herein as "third party vendors" or "third party software vendors"). City may be held directly responsible by such third party vendors for acts relating to the Avolve SAAS Solution

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component parts that are not authorized by this Agreement. City's use of such third party software is limited to only in conjunction with Avolve SAAS Solution and City acknowledges that it is not allowed to modify such third party software or use it independent from Avolve SAAS Solution TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CUSTOMER WAIVES, AND WILL CAUSE ITS USERS TO WAIVE, ALL CLAIMS AND CAUSES OF ACTION AGAINST SUCH THIRD PARTY SOFTWARE VENDORS THAT ARISE UNDER THIS AGREEMENT

2. If City purchases from Avolve hosting of the Avolve SAAS Solution on the Microsoft® Windows Azure™ platform, the terms and conditions for such cloud services as such may be updated by Microsoft Corporation from time to time, are found online on at <https://docs.microsoft.com/en-us/partner-center/agreements>. City should review the documents available on this website carefully to be sure that City reviews the appropriate customer agreement. If City has purchased Microsoft Cloud for US Government, review the customer agreement for Microsoft Cloud for US Government. If City is purchasing commercial access, the customer agreement for commercial access for the United States applies. Upon City's request, Avolve will provide City with assistance on finding and/or a copy of the appropriate Microsoft customer agreement. City acknowledges and agrees THAT (A) THE HOSTED SERVICES WILL BE PERFORMED SOLELY AND EXCLUSIVELY SUBJECT TO THE APPLICABLE MICROSOFT CORPORATION'S CUSTOMER AGREEMENT (the "Microsoft Customer Agreement") , (B) THAT AVOLVE DOES NOT GUARANTY MICROSOFT CORPORATION'S OBLIGATIONS PURSUANT TO THE MICROSOFT CUSTOMER AGREEMENT, AND (C) NOR CAN AVOLVE GRANT ANY WARRANTIES OR ADDITIONAL TERMS TO THE CITY AS TO THE HOSTED SERVICES UNDER THIS AGREEMENT. THE HOSTED SERVICES ARE SOLELY GOVERNED BY THE MICROSOFT CUSTOMER AGREEMENT, TO WHICH AVOVLE IS NOT A PARTY. Microsoft Corporation makes certain service level commitments to its customers, which are available online in the Microsoft Corporation's SLAs at <https://azure.microsoft.com/en-us/support/legal/sla/summary/>. If City desires to make a claim under the Microsoft Corporation SLAs, City shall submit the claim through Avolve. Avolve will escalate the claim to Microsoft Corporation for review. If Microsoft Corporation determines that a credit is due, Avolve will credit City the amount Microsoft Corporation has paid to Avolve for the SLA credit promptly after receiving the credit from Microsoft Corporation.
- h. Compatibility Updates. Avolve will make commercially reasonable efforts to update the Avolve SAAS Solution, if and as required, to cause it to operate under new versions or releases of current operating systems and internet browsers, within fifteen (15) months of general availability.
- i. Passwords, Access. City may designate and add Users and shall provide and assign unique passwords and user names to each authorized User pursuant to Avolve's then-current protocols. At Avolve's discretion, Users may be added either by Avolve or directly by City. City shall ensure that multiple Users do not share a password or user name. City further acknowledges and agrees that it is prohibited from sharing passwords and/or user names with unauthorized users. City will be responsible for the confidentiality and use of its Users passwords and user names. Avolve will act as though any electronic communications it receives under such passwords, user names, and/or account numbers have been sent by City. City agrees to immediately notify Avolve if it becomes aware of any loss or theft or unauthorized use of any of passwords, user names, and/or account numbers. City agrees not to access Avolve Cloud by any means other than through the interfaces that are provided by Avolve.

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- j. Transmission Of Data. City understands that the technical processing and transmission of City Data is necessary to use of the Avolve SAAS Solution, and consent to Avolve's interception and storage of City Data. City understands that its Users or Avolve may be transmitting City Data over the Internet, and over various networks, only part of which may be owned by Avolve. Avolve is not responsible for any portions of City Data that are lost, altered, intercepted or stored without authorization during the transmission of City Data across networks not owned by Avolve.
  - k. City Responsibilities. City will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of City Data and the means by which it acquired City Data, (c) be responsible for cooperating and assisting Avolve as reasonably requested by Avolve to facilitate performance of its obligations and exercising of its rights under this Agreement, (d) use the Avolve SAAS Solution and any other materials provided by Avolve only in accordance with the Documentation and applicable laws and government regulations, including complying with all applicable legal requirements regarding privacy and data protection so as to not violate the intellectual property, privacy or any other rights of any third parties, and (e) use commercially reasonable efforts to prevent any security breach, including any unauthorized access to or use of the Avolve SAAS Solution. Should City become aware of any actual or threatened security breach, City shall promptly notify Avolve and take all reasonable and lawful measures within its control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Avolve SAAS Solution). City shall provide sufficient notice to, and obtain sufficient consent from, its Users and any other party providing personal data to Avolve and its suppliers (including the Microsoft Corporation) to permit the processing of data by Avolve and its supplier, and their respective affiliates, subsidiaries, and service providers solely to the extent such processing of data is expressly allowed for under this Agreement, including for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Avolve solely to the extent Avolve is required to do so by law, or otherwise mutually agreed to in writing by the parties.
  - l. Data Backup. The Avolve SAAS Solution is programmed to perform data backups of City Data stored within the Avolve SAAS Solution in accordance with Avolve's then-current standard storage limits and data backup practices (available upon request). Additional data backups may be purchased for an additional fee from Avolve and such additional data backup services shall be documented in an SOW pursuant to Section B of this Agreement. In the event of any loss, destruction, damage or corruption of City Data caused by Avolve or the Avolve SAAS Solution, Avolve, as its sole obligation and liability and as City's sole remedy, will use commercially reasonable efforts to restore City Data from Avolve's most current backup of City Data.
  - m. Ownership. City acknowledges and agrees that Avolve owns all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Avolve SAAS Solution and any suggestions, enhancements requests, feedback, recommendations or other information provided by City or any of its Users related to the Avolve SAAS Solution. City's use rights to the Avolve SAAS Solution and the related materials supplied by Avolve pursuant to this Agreement are strictly limited to the right to use the proprietary rights in accordance with the terms of this Agreement. No right of ownership, expressed or implied, is granted under this Agreement.
2. Security. The security, privacy and data protection commitments set forth in this Agreement only apply to products and services provided by Avolve directly to City and do not include any products or services resold by Avolve hereunder, including any hosting services provided by Microsoft Corporation pursuant to the City's Microsoft Customer Agreement.
- a. Security Program. Avolve has implemented and maintains an information security program that incorporates administrative, technical, and physical safeguards designed to protect the security,

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confidentiality, and integrity of the City Data provided by City and its Users to Avolve in accordance with this Agreement.

- b. Annual Audit. Avolve will use commercially reasonable efforts to conduct an annual security audit of Avolve using an independent third party selected by Avolve. Upon the City's written request, a copy of the final report from any such audit shall be promptly provided the City. The City agrees that any such reports or other information provided to City concerning any audit shall be the Confidential Information of Avolve.
  - c. Security Breach. Avolve will notify City promptly and in no event later than one (1) business day following Avolve's discovery of a Data Security Breach (defined below) and shall (i) undertake a reasonable investigation of the reasons for and the circumstances surrounding such Data Security Breach and (ii) reasonably cooperate with City in connection with such investigation, including by providing City with an initial summary of the results of Avolve's investigation as soon as possible, but in all cases within two (2) business days after the date Avolve discovered or reasonably suspected a Data Security Breach, and then regular updates on the investigation as it progresses; (iii) not make any public announcements relating to such Data Security Breach without City's prior written approval, which shall not be unreasonably withheld; (iv) use commercially reasonable efforts to take all necessary and appropriate corrective action reasonably possible on Avolve's part designed to prevent a recurrence of such Data Security Breach; (v) collect and preserve evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Data Security Breach, which shall meet reasonable expectations of forensic admissibility; and (vi) if requested by City, at City's cost, provide notice to individuals or entities whose Confidential Information was or may have been affected in a manner and format specified by City. In the event of any Data Security Breach is caused by Avolve, City shall have, in addition to all other rights and remedies available under this Agreement, law and equity, the right to terminate the Agreement upon thirty (30) days prior written notice. For purposes of this Agreement, the term "Data Security Breach" shall mean any of the following occurring in connection with City Data in connection with City's and its Users' authorized use of the Avolve SAAS Solution: (a) the loss or misuse of City Data; and (b) disclosure to, or acquisition, access or use by, any person not authorized to receive City Data, other than in circumstances in which the disclosure, acquisition, access or use is made in good faith and within the course and scope of the employment with Avolve or other professional relationship with Avolve and does not result in any further unauthorized disclosure, acquisition, access or use of City Data.
  - d. Signatures. The parties shall use electronic signatures for all agreements unless otherwise prohibited by law. Prior to any public disclosure of any document containing a signature, the signature shall be redacted by the disclosing party in a manner which renders it illegible and unable to be copied.
3. Suspension Right. Avolve reserves the right to include disabling devices in the service and software provided under this Agreement and to use such disabling devices to suspend access and/or use when any payment is overdue or when the software provided is not used in accordance with Avolve and City's contracts. Avolve shall notify City on the same business day regarding the possibility of a suspension or, where Avolve believes in good faith it must immediately suspend due to a material risk of harm to Avolve, its systems, or its customers' systems, of an actual suspension (an "Immediate Risk Suspension"). City shall have 30 days to correct any basis for a possible suspension, but for Immediate Risk Suspensions, Contractor shall be entitled to immediately suspend without prior notice or a cure period for the City. In addition, if City is using Microsoft Corporation for hosting services, Microsoft Corporation may terminate or suspend City's hosting services in accordance with the City's Microsoft City Agreement and, should this happen, City will not be able to access the Avolve SAAS Solution. Customer agrees that Avolve shall not be liable to Customer, Users or to any third party for any suspension or inability to access the Avolve SAAS Solution pursuant to this Section A(3) if suspended for failure to pay, upon payment in full of all amounts overdue (including any interest owed), City may request the reactivation of its account. Avolve shall reactivate promptly after receiving in advance all applicable reactivation fees, provided that Avolve has not already terminated this Agreement.



4. Ownership and Disposition of City Owned Data, Hosting Location. "City Data" refers to the data provided by the City that resides in the City's Avolve SAAS Solution environment, including any plan review, project drawings and associated project documents. City shall own all City Data that may reside within Contractor's hosting environment, to include Disaster recovery site, equipment and media. Contractor is granted no rights hereunder to use the City Data except to the extent necessary to fulfill its obligations to City under this Agreement. Unless approved in writing by City, Avolve shall host the Avolve SAAS Solution provided to City hereunder from a data center located within the United States. Upon termination or expiration of City's right to use the Avolve SAAS Solution for any reason other than City's uncured material breach, for the first thirty (30) calendar days following termination or expiration, City may request in writing that Avolve provide a copy of City's then-current City Data and, for no additional cost, Avolve shall provide a copy in a mutually agreed upon format on media supplied by the City. If the parties are unable to mutually agree upon the format or the media supplied by City is not acceptable to Avolve, Avolve will use commercially reasonable efforts to still provide a copy of the City Data but Avolve may charge a reasonable professional services fee for increased costs incurred. After this time period has expired, Avolve has no further obligation to retain the City Data and shall use commercially reasonable efforts to promptly delete all City Data from the Avolve SAAS Solution.
5. Verification. Avolve shall be permitted to audit (at least once annually and in accordance with Avolve standard procedures, which may include on-site and/or remote audit) the usage of the Avolve SAAS Solution and any other materials provided by Avolve to City. City shall cooperate reasonably in the conduct of such audits

## **SECTION B. – PROFESSIONAL SERVICES AND SOWS**

1. Statements of Work. From time-to-time during the Term of this Agreement, the parties may enter into statements-of-work (each being an "SOW") for Avolve SAAS Solution use rights (including additional storage) and/or Professional Services on terms mutually agreed in writing between the parties in the SOW, including, without limitation, scope of services, expected deliverables, milestone dates, acceptance procedures and criteria, fees and other such matters. No SOW shall be binding until executed by both parties. Each SOW will be incorporated into and subject to this Agreement.

## **SECTION C. – GENERAL TERMS AND CONDITIONS**

1. Fees.
  - a. Implementation SOW and Additional Storage Fees. The Implementation SOW includes the Avolve SAAS Solution subscription fees, as well as the training and implementation professional services; which, unless set forth otherwise in the Implementation SOW, shall be invoiced by Avolve in full, in advance on the Effective Date.
  - b. Other SOWs. Any SOWs that Avolve and the City may execute from time to time during the Term of this Agreement shall include within them the applicable fees, including whether the Avolve SAAS Solution subscription fees and/or Professional Services fees are being paid by City through Financing Company, by City through another paying agent, or by City directly to Avolve. Unless otherwise specified in the SOW, Professional Services fees will be invoiced as the Professional Services are delivered and Avolve SAAS Solution subscription fees will be invoiced yearly, in advance, in full at the time the SOW is executed.
2. Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
3. Confidentiality. Each party shall use commercially reasonable efforts to hold confidential information ("Confidential Information") of the other in confidence. All Confidential Information (including but not limited

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to data) shall (i) remain the sole property of the disclosing party and (ii) be used by the receiving party only as authorized herein. Information will not be considered to be Confidential Information if (i) available to the public other than by a breach of this agreement; (ii) rightfully received from a third party not in breach of any obligation of confidentiality, (iii) independently developed by or for a party without access to Confidential Information of the other; (iv) lawfully known to the receiving party at the time of disclosure, (v) produced in compliance with applicable law, securities reporting requirement or a government or court order, provided the other party is given notice and an opportunity to intervene; or (vi) it does not constitute a trade secret and more than three (3) years have elapsed from the date of disclosure. If Avolve receives a request for City Data (either directly or as redirected to Avolve by the Microsoft Corporation), then Avolve shall redirect the law enforcement agency to request that data directly from City. If compelled to disclose City Data to law enforcement, then Avolve shall promptly notify City and provide a copy of the demand, unless legally prohibited from doing so. To the extent required by law, City shall notify individual Users that their data may be processed for the purpose of disclosing it to law enforcement of other governmental authorities as directed by Avolve, and shall obtain the User's consent to the same.

a.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

Avolve Software Corporation

By: \_\_\_\_\_

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

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

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



Jany Mayan

CFO

2/5/2020

CITY OF BAKERSFIELD

By: \_\_\_\_\_

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

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

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

## EXHIBIT 1 – SERVICES SERVICE LEVEL AGREEMENT (SLA) SUPPORT PROCESS AND SERVICE LEVEL AGREEMENT

Avolve's current support process and service level commitments ("Support") are defined below.

**Support Portal.** Avolve provides Support through its Support Portal (<https://support.avolvesoftware.com>). All issues can be logged using the portal or through an on-call support number. City personnel receive Support Portal login credentials promptly following purchase of rights to use the Avolve SAAS Solution. After a login is received, the City may enter, track, update, and report on trouble ticket, as well as communicate with Avolve helpdesk staff via phone, email, web meeting, and/or ticket notes. Help, FAQs, Documentation, and a Knowledge-base are also available at the Avolve support portal.

**Support Hours. 8 AM – 5 PM MST.**

**Planned Downtime.** Avolve or its third-party agent may render the Avolve SAAS Solution unavailable in order to perform upgrades, updates, patches, enhancements and routine maintenance activities, so long as the Avolve SAAS Solution is only unavailable to City and its City Users outside of the hours of 8 AM through 5 PM Mountain Standard Time on business days during the Subscription Term. Avolve shall provide no less than five (5) days advance notice to City of any planned downtime. City acknowledges that in the case of emergencies, Avolve or its third-party agents may render the Avolve SAAS Solution unavailable in order to address the emergency. In such situations, if reasonably feasible, Avolve will provide notice to City in advance of rendering the Avolve SAAS Solution unavailable or, if not reasonably feasible, notice to City promptly following the rendering of the Avolve SAAS Solution unavailable. City understands and agrees that Avolve shall not be liable for any such interruption in access to the Avolve SAAS Solution for downtime occurring pursuant to this paragraph (collectively, referred to herein as "Planned Downtime").

**On-Site Emergency Support.** City may request on-site emergency operational support services as a separate and distinct billable service. In such cases and at its discretion, Avolve will dispatch appropriate technical staff to deliver on-site technical services.

**Problem Determination and Resolution.** Avolve resources are allocated to resolve reported problems based on the severity level as described in the following table. Avolve uses commercially reasonable efforts to provide a prompt acknowledgement, acceptable resolution, workaround, or a plan for the provision of a resolution or acceptable workaround in the timeframe set forth below:

Severity Level	Definition	Response Time	Resolution Commitment
<b>System Down</b>	An error that causes a <u>catastrophic</u> failure substantially impacting City's business.	1 Hour	<p>The Level 1 Support Engineer will try to resolve the issue within 15 – 30 minutes. If it requires further investigation and longer resolution time, it is escalated to the Level 2 or 3 Support Engineer <b>during business or non-business hours</b>. Status updates will be provided periodically, but no less than 4 hour intervals, on System Down tickets <b>24x7</b> until resolution.</p> <p>Infrastructure issues are often resolved quickly by service or system restart. Any potential system alerts will be promptly addressed in an effort to avoid issues from</p>



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Severity Level	Definition	Response Time	Resolution Commitment
			occurring.
High	An error that causes Avolve product to fail without significant business impact. Causes a substantial reduction in performance.	24 Hours	<p>The Level 1 Support Engineer will try to resolve the issue within 15 – 30 minutes. If it requires further investigation and longer resolution time, it is escalated to the Level 2 or 3 Support Engineer during business hours*. Status updates will be provided periodically on High Priority tickets during business hours* until resolution. If a work-around is provided, the original High Priority ticket will be closed and a new ticket will be created to track the progress for a permanent solution to the issue.</p> <p>Infrastructure issues are often resolved quickly by service or system restart. Any potential system alerts will be promptly addressed in an effort to avoid issues from occurring.</p>
Medium	An error that causes only minor impact on use of the product.	72 Hours	Avolve and City will commit resources during normal business hours* for problem resolution.
Low	A service request for a new feature, additional documentation, or an explanation of product functionality.	5 Days	Avolve and City will commit resources during normal business hours* for problem resolution. Enhancement requests will be logged and sent to Avolve Development for review and possible incorporation into Avolve products.

\*Normal Business Hours: 8:00 a.m. through 5:00 p.m., Monday through Friday (excluding standard holidays), Mountain Standard Time.

- **Response Time.** Once a problem has been reported, the City receives an acknowledgement by email, phone or the through the support portal. Avolve will begin the process of problem determination and resolution at this point. The time the ticket is submitted and the response time will be logged to ensure SLA is met.
- **Status Updates.** During the problem determination and resolution process, City may receive regular communications, via email, phone or the support portal, as to the status of the problem determination and resolution. All communications should be logged in Avolve's support system including date, time, and contact name. This helps Avolve and the City determine the status and duration of the issue reported.
- **Resolution.** In response to the problem reported, City will receive, as appropriate, one of the following resolutions: an existing correction, a new correction, a viable workaround, or a plan on how the problem will be addressed.

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- **Severity Re-classification.** If City determines that the severity of a previously reported issue should be re-classified or escalated, it should contact Avolve Support with request.

**Unsupported Issues.** Avolve does not cover under Support, and the SLA does not include, the following conditions (collectively, the "Unsupported Issues").

- Any Avolve SAAS Solution use not covered by an active support contract and/or not in compliance with a valid agreement with Avolve. Authorized users of the Avolve SAAS Solution are entitled to Support as part of their use fee.
- Any Avolve SAAS Solution that is altered or modified other than as approved in writing by Avolve.
- Software installed on any computer hardware/software configurations not supported by Avolve.
- Problems caused by misuse or misapplication of the Avolve SAAS Solution, including any anomalies and/or failures in test or production operating environments that impact the Avolve SAAS Solution and are determined to have their cause due to unwarranted City decisions, actions, system configuration/ modification, policies and/or procedures.
- Problems caused by City's custom application code authorized to be developed using Avolve APIs as set forth in the documentation accompanying such API and the City's Agreement.
- Problems caused by updates or upgrades of 3rd party applications that are integrated with Avolve products and/or services.
- Services required to implement any updates, upgrades or releases on City's network, as well as all other operational support issues, are not included with Avolve Support. Such additional services may be purchased for an additional fee.
- All Training programs, regardless of software version updates and/or upgrades.
- Operational Support including but not limited to: (a) Windows configuration issues; (b) SQL Database maintenance and or tuning; (c) VMWare tuning or configuration; (d) Firewall configuration; (e) Network performance; (f) End-User browser support; (g) User-modified and new workflows or eForms.
- Any other reasons set forth in the City's Agreement, including without limitation any down-time due to Microsoft Corporation.

Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to City. Any services provided for exclusions shall be paid by City at Avolve's then-current rates, as well as all travel and other expenses incurred by Avolve in providing such services.

**City's Obligations for Operational Support.** To facilitate clear and consistent communication and timely issue resolution, City shall designate up to two contact persons for technical support processes. These individuals are responsible for initiating support requests, communicating with Avolve technical support personnel, and monitoring the support process with Avolve. Timely City response to Avolve requests for information during issue resolution is a necessary pre-requisite to Avolve's providing Support. Avolve also requires remote access to the City system for the purpose of problem determination and analysis. Where reasonably necessary to provide Support, City shall provide Avolve's technical support personnel reasonable, remote access capabilities into City's systems. Upon Avolve's request, City will also provide reasonable supporting data to aid in the identification and resolution of the issue.

### Service Level Commitment

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Avolve will use commercially reasonable efforts to make the Avolve SAAS Solution Available with an Annual Uptime Percentage of at least 99.99%, excluding Planned Downtime. In the event that Avolve does not meet this uptime commitment, City will be eligible to receive a service credit for 1% of the monthly fee for each one (1) hour of downtime during City's normal business hours, up to 50% of City's Pro-Rated Monthly Subscription Fee.

### Definitions

- "Annual Uptime Percentage" is calculated by subtracting from 100% the percentage of 10-minute periods during a calendar month in which the Avolve SAAS Solutions was Unavailable to City.
- "Availability" means the ability to log into the Avolve SAAS Solution.
- "Claim" means a claim for a service credit City submits by opening a support case with Avolve, on the basis that the hosted Avolve SaaS Product infrastructure has been Unavailable to City during a service month.
- "Pro-Rated Monthly Subscription Fee" is calculated by dividing the City's applicable annual Avolve SAAS Solution subscription fee by twelve.
- "Unavailability" means the inability to log into the Avolve SAAS Solution.

### Service Credit Requests

To receive a service credit, City must notify Avolve and submit a Claim within thirty (30) days from the incident that would be the basis for the claim. To be eligible, the Claim must include (a) the dates, times, description and duration of each incident experienced; and (b) the City's event logs or any other system telemetry that document the errors and corroborate the claimed Unavailability (any confidential or sensitive information should be removed). Failure to provide a timely Claim, which includes all the required information, will disqualify the Claim and City from receiving a service credit. If Avolve validates the Claim, then Avolve will promptly issue the service credit.

### Service Credit Provisions

Service credits are City's sole and exclusive remedy for any failure of Avolve to provide the Avolve SAAS Solution in accordance with the terms of the Agreement. Service credits shall be a credit toward future services only and do not entitle City to any refund or other payment from Avolve. Service credits may not be transferred, applied to another account, exchanged for, or converted to monetary amounts.

The maximum service credits awarded with respect to Claims the City submits in any calendar month shall not, under any circumstance, exceed in the aggregate 50% of the City's Pro-Rated Monthly Subscription Fee for such month. Avolve will use all information reasonably available to it to validate Claims and make a good faith judgment on whether a service credit should be applied to the Claim.

### SLA Exclusions

This SLA does not apply to any Availability or Unavailability of the Avolve SAAS Solution:

- During Planned Downtime;
- Caused by Unsupported Issues;
- Caused by factors outside of Avolve's control, including any force majeure event or interruption or impediment to Internet access or related problems;
- That result from City's equipment, software or other technology and/or third party equipment, software or other technology, including any third party hosting providers;

## Exhibit A

- That resulted from Planned Maintenance or associated to beta, evaluation, non-production systems, and trial services accounts;
- That result from any actions or inactions from City or any third party, including employees, Users, agents, contractors, or vendors, or anyone gaining access to the hosted Avolve SaaS Product Infrastructure by means of City's (and its Users') passwords or equipment;
- Arising from Avolve's suspension and termination of City's right to use the hosted infrastructure in accordance with the Agreement; and
- That result from Avolve application software implementation errors caused by configuration, customization, installation, or human errors.
- Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to City. Avolve may, but is not obligated to, issue a Service Credit in Avolve's sole discretion where City's use of the Avolve SAAS Solution may be Unavailable due to factors other than expressly provided here in this SLA.

**EXHIBIT 2 – Form of Implementation SOW**

Will provide Monday 1/27

**EXHIBIT B: ORDER FORM**

To be provided separately