



## EXECUTIVE SUMMARY

### HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: July 8, 2022

HCR22-095

SUBJECT: Contract with Yardi Systems Inc., for an Enterprise Resources Planning (ERP) System

COUNCIL DISTRICT(S): Citywide

ORIGINATING DEPARTMENT: Information Technology

CONTACT/PHONE NUMBER: Beto Juarez (619) 578-7755

**REQUESTED ACTION:**

Authorize the award of a one-year contract, with four one-year options to renew, to Yardi Systems, Inc. for an Enterprise Resources Planning (ERP) system.

**EXECUTIVE SUMMARY OF KEY FACTORS:**

- The Housing Commission has been utilizing Yardi's ERP system for the past 10 years. This system has allowed the business to integrate multiple legacy applications such as Emphasys and Peoplesoft, while automating many back-office functions in the areas of accounting, procurement, property management, finance and real estate.
- A Request for Proposals (RFP) was issued on February 15, 2022. The RFP was posted and made available for download on the PlanetBids website through both the Housing Commission's and the City of San Diego's portals.
- Two proposals were submitted. One of the proposals was determined to be non-responsive. The proposal submitted by Yardi Systems, Inc. was selected as the most responsive and responsible proposal after review by the evaluation committee.
- The contract will allow the Housing Commission to continue to work efficiently, effectively and accurately on an integrated, cloud-hosted software platform with improved capabilities and functionality. System capabilities include improved financial management workflows, guaranteed security compliance, automatic encryption of data, and 24/7 system monitoring spread across 12 data centers around the globe.
- In addition to financial system management and procurement functions, Yardi serves as the integrated property management and voucher management system that serves as the primary platform for managing those department functions. The Housing Commission's Yardi contract also helps connect constituents to the Housing Commission by use of the Rent Café Portals.
- Other public agencies currently utilizing the Yardi Enterprise Resources Planning system include Seattle Housing Authority, Housing Authority of the City of Los Angeles, San Bernardino Housing Authority, Washington D.C. Housing Authority, and Oakland Housing Authority.
- The funding proposed by this action is included in the Housing Commission's Fiscal Year 2023 Budget, which the Housing Authority of the City of San Diego approved on June 13, 2022. Funding for future years will be included in the budget approval process for those fiscal years.
- The contract amount is \$596,000 for the first year and \$645,000 each for years two through five, for a total potential compensation of \$3,176,000 if all of the option years are exercised.



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submitted. One of the proposals was determined to be non-responsive. The proposal submitted by Yardi Systems, Inc. was selected as the most responsive and responsible proposal after review by the evaluation committee. The Housing Commission is proposing to enter into a new contract with Yardi to continue supporting these operations.

The contract will allow the Housing Commission to continue to work efficiently, effectively and accurately on an integrated, cloud-hosted software platform with improved capabilities and functionality. System capabilities include improved financial management workflows, guaranteed security compliance, automatic encryption of data, and 24/7 system monitoring spread across 12 data centers around the globe.

In addition to financial system management and procurement functions, Yardi serves as the integrated property management and voucher management system that serves as the primary platform for managing those department functions. The Housing Commission's Yardi contract also helps connect constituents to the Housing Commission by use of the Rent Café Portals. These portals include the following: Public Housing Authority (PHA) Applicant and Resident Portal, PHA Online Certifications (implementation scheduled for December 2022) and the PHA Landlord Portal.

The contract amount, including the option years, is below:

Annual Software Fees	
Licensing / Support / Maintenance	
Year 1	\$596,000
Year 2	\$645,000
Year 3	\$645,000
Year 4	\$645,000
Year 5	\$645,000
Total	\$3,176,000

The Housing Commission is one of 39 original Moving to Work (MTW) agencies out of approximately 3,200 public housing authorities in the nation. The MTW designation from the U.S. Department of Housing and Urban Development grants public housing authorities, including the Housing Commission, the flexibility to design innovative, cost-effective ways of providing federal housing assistance to families with low income. Yardi has been heavily customized for the Housing Commission. The Housing Commission is also responsible for servicing and underwriting loans, issuing Multifamily Housing Revenue Bonds for affordable housing developments, and performing complex financial real estate operations.

Other public agencies currently utilizing the Yardi Enterprise Resources Planning system include Seattle Housing Authority, Housing Authority of the City of Los Angeles, San Bernardino Housing Authority, Washington D.C. Housing Authority, and Oakland Housing Authority.

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**FISCAL CONSIDERATIONS**

The funding proposed by this action is included in the Housing Commission’s Fiscal Year 2023 Budget, which the Housing Authority of the City of San Diego approved on June 13, 2022. Funding for future years will be included in the budget approval process for those fiscal years.

The Software License and Service agreement (Purchase Agreement) includes annual cost. Compensation for amendments and/or extensions will be based on the prior year’s cost, plus an escalation percentage cap of 4 percent for Consumer Price Index.

**HOUSING COMMISSION STRATEGIC PLAN**

This item relates to Strategic Priority Area No. 3 in the Housing Commission Housing Commission Strategic Plan for Fiscal Year (FY) 2022-2024: Investing in Our Team.

**ENVIRONMENTAL REVIEW**

These activities are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities), which allows the operation, repair, maintenance permitting, leasing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. Federal funds constitute a portion of the funding for these activities. The parties agree that the provision of any federal funds as the result of this action is conditioned on the City of San Diego’s final National Environmental Policy Act (NEPA) review and approval.

Respectfully submitted,

*Geoffrey Bartell*

Geoffrey Bartell

Vice President of Information Technology

San Diego Housing Commission

Approved by,

*Jeff Davis*

Jeff Davis

Interim President & CEO

San Diego Housing Commission

Docket materials are available in the “Governance & Legislative Affairs” section of the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org)

## SAAS SUBSCRIPTION AGREEMENT

Yardi Systems, Inc., a California corporation headquartered at 430 South Fairview Avenue, Goleta, CA 93117 (“Yardi”), and

**San Diego Housing Commission (“Client”)**  
1122 Broadway, Ste 300  
San Diego, CA 92101

enter into this agreement including any schedules, exhibits or other attachments (this “Agreement”) effective as of the Effective Date [defined in section 1 (Definitions), below].

### RECITAL

Yardi has developed certain application software for use by its clients in the real property and asset management industry. Yardi application software is available only in the Yardi Cloud [defined in section 1 (Definitions), below]. Client desires to access the Yardi Cloud to use such Yardi software pursuant to this Agreement’s terms.

In consideration of their respective rights and obligations as set forth in this Agreement, the parties agree as follows:

### AGREEMENT

#### 1. Definitions.

a. “**Anniversary Date**” means the date that is 365 days after the Initiation Date, and each anniversary thereafter of the date that is 365 days after the Initiation Date, during this Agreement’s Term.

b. “**Business Purposes**” means accessing the Yardi Cloud to use the Licensed Programs and Yardi Cloud Services for Client’s property management and accounting, and related business purposes.

c. “**Client Data**” means the data that Designated Users transmit and/or enter into the database provided as part of the Yardi Cloud in connection with their Use of the Licensed Programs pursuant to this Agreement.

d. “**Contractor**” means a contractor who: (i) has an Independent Consultant Network License Agreement with Yardi; and (ii) is a current member in good standing of Yardi’s Independent Consultant Network.

e. “**Deliverable**” means any deliverable or intellectual property delivered to Client as part of Programming Services [defined in section 14 (Programming Services)] or other services provided pursuant to this Agreement.

f. “**Designated User**” or “**DU**” means a Client employee or Contractor designated by Client to access the Yardi Cloud and Use the Yardi Cloud Services and Licensed Programs for Business Purposes.

g. “**Effective Date**” means August 15, 2022.

h. “**Fees**” means the fees identified in Schedule A (Fee Schedule), and any other fees that may become due under this Agreement.

i. “**Force Majeure Event**” means any event beyond the reasonable control of the party affected by such event, including without limitation fire, storm, weather, earthquake, explosion, casualty, strike, war, riot, civil disturbance, act of God, acts or omission of any third party, any state or national law, decree, or ordinance, or any executive or judicial order, which event causes a party to delay or fail to perform under this Agreement.

j. “**Initiation Date**” means September 1, 2022.

k. “**Licensed Programs**” means the software program(s) identified in Schedule A (Fee Schedule).

l. “**Licensed Programs Documentation**” means the user manuals and documentation for the Licensed Programs.

m. “**Password**” means the unique username and password assigned by Client to each Designated User as more fully described in section 6 (Users and Passwords).

n. “**POC(s)**” means the person(s) Client identifies to Yardi as point(s) of contact for application support services and other account management purposes.

o. “**Undisputed Fees**” means all Fees due from Client under this Agreement which Client does not reasonably and in good faith dispute - and provide notice of such dispute in accord with section 18(f) (Notices) - within 30 days of invoice.

p. “**Use**” means authorized access to the licensed software in the Yardi Cloud and use of the Licensed Programs and Licensed Programs Documentation by Designated Users solely for Business Purposes.

q. “**Yardi Cloud**” means the hardware, software, storage, firewalls, intrusion detection devices, load balancing units, switches and other hardware that make up the Yardi Cloud.

r. “**Yardi Cloud Services**” means installation, maintenance and service of the hardware and software comprising the Yardi Cloud.

#### 2. License Grant; Restrictions; Access to Yardi Cloud.

a. **Licenses.** Yardi grants to Client a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited license for Designated Users to: (i) access the Yardi Cloud and Use the Licensed Programs and Yardi Cloud Services solely for Business Purposes; and (ii) access the Licensed Programs Documentation and other content on Yardi’s Client Central website solely for Business Purposes and subject to the terms of use then-presented on Client Central.

b. **Restrictions.** Client may only exercise the license granted in section 2(a) (Licenses) through its Designated Users. Client may not rent, lease, sell, transfer (by sublicense, assignment or otherwise except as expressly provided by this Agreement), time share, modify, reproduce, copy, make derivative works from, distribute, publish, use to provide service bureau services, or publicly display the Licensed Programs. Client may only Use the Licensed Programs for Business Purposes. Client may not reverse engineer, decompile or otherwise attempt to discover the source code for the Licensed Programs. Client may not permit any person or entity to breach the restrictions in this section 2(b) (Restrictions). Client may

not copy or re-create the Licensed Programs or its objects without Yardi's prior express written consent. Client agrees that the Licensed Programs must remain at all times in the Yardi Cloud, and may not be removed or copied to any other location at any time. Client acknowledges and agrees that Client may not perform scans or electronic testing of any kind on the Yardi Cloud, Licensed Programs, Yardi's corporate networks, and Yardi's corporate servers including, without limitation, vulnerability scanning or testing, penetration scanning or testing or any other type of scanning or testing of the Yardi Cloud, Licensed Programs, Yardi's corporate networks, and Yardi's corporate servers.

c. **Access to the Yardi Cloud.** Yardi will use commercially reasonable efforts to make the Yardi Cloud and the Licensed Programs accessible to Designated Users 24-hours per day, 7 days per week, excluding down time for maintenance and repair. Yardi has standing maintenance/repair/backup hours from 11:00 pm (local time at the data center) each day to 1:00 am (local time at the data center) each succeeding day, and an additional 2 hours for the maintenance/repair/backup hours beginning at 11:00 pm (local time at the data center) each Saturday night [i.e., the Saturday-night-to-Sunday-morning standing maintenance/repair/backup hours extend an extra 2 hours until 3:00 am (local time at the data center) each succeeding Sunday]. Yardi will use commercially reasonable efforts to provide as much notice to Client as reasonably possible under the circumstances for emergency maintenance/repair downtime outside the aforementioned standing hours.

### 3. **Term and Termination.**

a. **Term.** This Agreement will commence on the Effective Date and shall remain in full force until Client's fifth Anniversary Date (the "Initial Term") unless earlier terminated in accord with section 3(c) (Termination for Cause). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive 3-year terms (each a "Renewal Term") unless a party provides written notice of non-renewal at least 30 days prior to expiration of the then-current (Initial or Renewal) Term. The Initial Term and Renewal Term(s) shall be collectively referred to as the "Term."

#### b. **Intentionally Omitted.**

c. **Termination for Cause.** Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within 7 days of written notice of a material breach, or if the breaching party cannot reasonably cure the material breach within 7 days, the breaching party fails to initiate cure within 7 days and fails to continuously and diligently work to cure the breach until the breach is cured. Termination pursuant to this section 3(c) (Termination for Cause) shall be effective upon delivery of written notice after expiration of the applicable cure period.

d. **Effect of Termination.** Upon the effective date of this Agreement's termination or expiration: (i) the license for the Licensed Programs and Licensed Programs Documentation will terminate; (ii) Client will cease Use of the Yardi Cloud, Yardi Cloud Services, Licensed Programs and Licensed Programs Documentation; (iii) Client's access to the Yardi Cloud and Licensed Programs will be disabled; and (iv) Client shall pay any Undisputed Fees to Yardi.

e. **Survival.** The parties' obligations under, and the provisions of, sections 4 (License Fees), 8(b) (Limited Liability for Unauthorized Client Data Access), 9 (Confidentiality), 10 (Warranties), 11 (Damage Limitations), 13 (Indemnification), 15 (Assignment) and 18 (General Provisions) shall survive this Agreement's termination or expiration.

### 4. **License Fees.**

a. **Fees.** Client agrees to pay Yardi the Fees in accordance

with the payment terms set forth in Schedule A (Fee Schedule).

b. **Failure to Pay.** Client's failure to timely pay any Undisputed Fee when due is a material breach subject to the terms of section 3(c) (Termination for Cause). Additionally, Undisputed Fees shall accrue interest from their due date until paid at the rate of 1.5% per month or the maximum rate allowed under applicable law whichever is less.

c. **Taxes.** The Fees are exclusive of any tariff, duty, or tax, however designated, levied, or based including, without limitation, any taxes based on: (i) this Agreement; (ii) the Licensed Programs, Yardi Cloud, Yardi Cloud Services, or Deliverables; (iii) Client's Use of the Yardi Cloud, Yardi Cloud Services, or Licensed Programs; (iv) the Licensed Programs Documentation; or (v) any materials or supplies furnished by Yardi per this Agreement. Client is responsible for all applicable tariffs, duties, or taxes (exclusive of taxes based on Yardi's net income) applicable to this Agreement.

d. **Partial Fee Disputes.** If Client reasonably and in good faith disputes any Fees, and provides notice in accord with section 18(f) (Notices) of such dispute, Client agrees that any undisputed portion of such Fees are Undisputed Fees and Client agrees to timely pay any such Undisputed Fees.

### 5. **Implementation and Training.**

a. **Third Party Software and Hardware Requirements.** Client is solely responsible for purchasing, installing, and maintaining, at Client's expense, any third party software and hardware necessary for Designated Users to access the Yardi Cloud and Use the Licensed Programs and Yardi Cloud Services. Yardi shall not be liable for any such third party software or hardware, and Client acknowledges and agrees that any assistance provided by Yardi in connection with such third party software and hardware shall not alter Client's responsibility or Yardi's liability disclaimer under this section 5(a) (Third Party Software & Hardware Requirements).

b. **Location.** Implementation and training services may (at Client's election) take place at a location specified by Client or via telecommunications. Yardi will bill Client for initial implementation/training services as indicated in Schedule A (Fee Schedule). Client may request additional on-site implementation/training services [i.e., in addition to the on-site implementation/training services set forth in Schedule A (Fee Schedule)] at any time and Yardi will make commercially reasonable efforts to timely accommodate Client's request. Additional on-site implementation/training services are subject to the parties' mutual agreement on: (i) the schedule for performance of the additional services; and (ii) Yardi's Fees for the additional services. Client acknowledges and agrees that no recording of any sort (whether audio, visual, or otherwise) of Yardi Implementation/Training services is allowed under this Agreement or otherwise.

c. **On-Sites.** Client acknowledges that in-person implementation/training service visits at a Client location require a minimum visit of 8 hours per visit. Client agrees to pay all reasonable expenses associated with on-site visits including, but not limited to, travel to and from the site, lodging, meals, etc. Client acknowledges that training services for more than 12 Client trainees require Client to pay for 1 additional Yardi trainer for each 12 Client trainees in excess of 12. Client agrees that Client must pay for any implementation/training services cancelled less than 10 business days prior to their scheduled date.

d. **Data Conversion.** Yardi will bill Client for electronic data conversion services, if initially ordered, at the rate stated in Schedule A (Fee Schedule). Absent an agreement to the contrary, Client shall otherwise be solely responsible for data conversion, data preparation, data entry and data verification, and any post-conver-

sion clean-up. Additional Yardi data conversion services [i.e., in addition to any initial data conversion services set forth in Schedule A (Fee Schedule)] are subject to the parties' mutual agreement on: (i) the schedule for performance of the additional services; and (ii) Yardi's Fees for the additional services.

e. **Testing.** Client shall have 90 days commencing upon the Effective Date (the "**Testing Period**") to test the Licensed Programs, Yardi Cloud and Yardi Cloud Services. At any time during the Testing Period, Client may elect to cease Use of the Licensed Programs, Yardi Cloud and Yardi Cloud Services and cancel this Agreement, in which event Yardi will refund to Client all amounts paid by Client to Yardi pursuant to this Agreement less reasonable amounts [determined by reference to the Fees/rates indicated in Schedule A (Fee Schedule)] for initial set-up, implementation, training and support of the Licensed Programs, Yardi Cloud and Yardi Cloud Services provided prior to Client's notice of cancellation pursuant to this section 5(e) (Testing).

## **6. Users and Passwords.**

a. **Designated Users.** Client agrees that its exercise of the license granted by this Agreement shall only be through its Designated Users. Client's license to access and Use the Yardi Cloud and Licensed Programs is limited as provided in Schedule A (Fee Schedule). Each Designated User must have a unique Password.

b. **Password Assignment.** Client's application support POC(s) will be Designated Users, will designate the other Designated Users, and will provide each other Designated User with a Password. Each Password shall be personal and unique to the applicable Designated User, and may not be used by anyone other than such Designated User. Each Password may only be used from 1 computer at any given time. Client shall be responsible for maintaining Designated User Password security.

c. **Client Obligations with Respect to Designated Users.** Client shall inform each Designated User of this Agreement's terms and restrictions and shall enforce such restrictions. Client agrees to notify Yardi if Client becomes aware of any failure of a Designated User to adhere to the license terms and restrictions in this Agreement.

## **7. Application Support & Upgrades.**

a. **Application Support Service.** Yardi will provide application support and upgrades for the Licensed Programs as set forth in this section 7 (Application Support & Upgrades).

b. **Client Contacts.** Client agrees to appoint application support POC(s). Client may change the application support POC(s) upon advance written notice to Yardi. Yardi shall have no obligation to contact, or communicate with, anyone regarding application support and maintenance issues except Client's application support POC(s). Client acknowledges that it is Client's responsibility to keep Client's application support POC(s) current, and to notify Yardi of any changes.

c. **Yardi Contacts.** During initial implementation, Yardi shall appoint an account manager to Client's account. After initial implementation, Yardi will either assign Client to an account manager or an application support team. Yardi may change the identity of individual account managers from time to time upon notice to Client. Client's application support records relating to Client will be available to Yardi's entire application support team at all times.

d. **Application Support Services.** Yardi shall provide application support for the Licensed Programs through its account managers and technical staff to Client's application support POC(s). Application support does not include on-site installation, implementation, training, or testing of the Licensed Programs, nor does it in-

clude data conversion. Those services, if initially ordered, are specified in Schedule A (Fee Schedule). Yardi's application support service team will use commercially reasonable efforts to address and solve Client's issues but cannot guarantee satisfaction in every case.

e. **Total Hours Included.** Client's annual application support allotment is specified in Schedule B.

f. **Application Support Hours.** Yardi's application support hours are from 5:00 am to 5:00 pm (Pacific Time) Monday through Friday (excluding holidays).

## **g. Priority.**

(i) Yardi shall have the right to prioritize application support requests according to the application support issue's impact on Client. Yardi will prioritize application support requests in the following order:

Priority 1: Business halted (total inability to perform normal operation)

- Client will submit support requests by telephone to Yardi's application support number.
- Response as rapid as reasonably feasible – generally within 2 business hours.

Priority 2: Business impacted (severe restriction of Client's Use of the Licensed Programs – a potentially critical problem)

- Client will submit support requests by telephone to Yardi's application support number.
- Prompt response subject only to delays for priority 1 issues, generally within 4 business hours.

Priority 3: Non-critical service requests (any issue that is not a Priority 1 or Priority 2 issue)

- Client will submit support request by telecommunications to Yardi application support.
- Response subject to delays for priority 1 and 2 issues, generally within 1 business day.

(ii) Yardi will work on Priority 1 and 2 issues with continuous focus, and with Client's cooperation, through resolution.

h. **Standard Term.** Application support services are subject to this Agreement's terms and timely payment of all Undisputed Fees. Subject to the section 3(c) (Termination for Cause) notice and cure provisions, Yardi may suspend application support services if Client fails to timely make any Undisputed Fee payment.

i. **Obsolescence.** Yardi reserves the right to cease providing application support services for the Licensed Programs on the later of: (i) 3 years from the date on which Yardi ceases to license the Licensed Programs; or (ii) 5 years from the Effective Date. Yardi agrees to notify Client if and when Yardi will cease application support services in accord with this section 7(i) (Obsolescence).

## **8. Client Data.**

a. **Client Data Storage.** Subject to Force Majeure Events, Yardi agrees to store Client Data on a virtual database server in the Yardi Cloud.

b. **Limited Liability for Unauthorized Client Data Access.** Yardi agrees to use: (i) firewalls and other technology generally used in the trade to prevent unauthorized third party access to its computer systems storing Client Data; and (ii) encryption technology generally used in the trade to prevent unauthorized third party access to Client Data transmissions. Notwithstanding the foregoing, Yardi shall not be liable to Client in the event that: (A) its use of firewalls and other technology generally used in the trade fails to

prevent unauthorized third party access to Client Data; or (B) its use of encryption technology generally used in the trade fails to prevent unauthorized third party access to Client Data transmissions. Nothing in this section 8(b) (Limited Liability for Unauthorized Client Data Access) shall constitute a representation or warranty by Yardi that Client Data storage or transmission will be inaccessible to unauthorized third parties.

#### **9. Confidentiality.**

a. **Confidential Information Definition.** "Confidential Information" means all technical and non-technical information including: (i) Client Data; (ii) patent, copyright, trade secret, and other proprietary information; (iii) inventions, know-how, processes, or algorithms; (iv) software programs, software source documents, object code, source code, database dictionaries, network diagrams, UML diagrams, Licensed Programs, Licensed Programs Documentation, Licensed Programs schema, Licensed Programs functions, Licensed Programs user interface screens, SSIS, data warehouse schema, cube specifications and configuration, the reports generated by the Licensed Programs, Yardi Cloud specifications and configuration, Yardi Cloud hardware specifications and configuration, and Yardi Cloud Services; (v) development, design details and specifications; (vi) a party's financial information; (vii) customer lists, business forecasts, sales and marketing plans and information; (viii) the prices offered or paid per this Agreement for Yardi's products and services; (ix) SSAE18 audit reports and PCI DSS attestations of compliance and any information related to SSAE18 audit reports and/or PCI DSS attestations of compliance; (x) this Agreement's terms; and (xi) any other information disclosed by a party, or to which a party is exposed because of this Agreement, that the disclosing party identifies as confidential at the time of disclosure or which – by its nature - reasonably should be regarded as confidential.

b. **Nondisclosure and Nonuse Obligations.** Each party (the "Receiving Party") agrees that it will not disseminate, distribute, expose, or in any way disclose any Confidential Information of the other party (the "Disclosing Party") to any third party. The Receiving Party may use the Disclosing Party's Confidential Information to the extent necessary to perform its obligations under this Agreement. The Receiving Party's employees and Contractors may use Confidential Information only for the specific business purpose for which it was made available and not for any other purpose. The Receiving Party's employees and Contractors may not use Confidential Information in any way that may compete with Disclosing Party. The Receiving Party may not disclose Confidential Information to its employees and Contractors for the purpose of enabling any such employees or Contractors to service, maintain, or modify the Licensed Programs. The Receiving Party agrees that it will treat all Confidential Information with the same degree of care as the Receiving Party accords its own Confidential Information, but in no event less than reasonable care. The Receiving Party agrees that it shall disclose Confidential Information only to those of its employees and Contractors who need to know such information, and the Receiving Party certifies that such employees and Contractors have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions applicable to the Receiving Party under this Agreement. The Receiving Party shall immediately give notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. The Receiving Party agrees to assist the Disclosing Party in remedying any such unauthorized use or disclosure of Disclosing Party's Confidential Information.

c. **Exclusions from Nondisclosure and Nonuse Obligations.** The Receiving Party's obligations per section 9(b) (Nondisclosure and Nonuse Obligations) shall not apply to Confidential Information that the Receiving Party can document: (i) was (through

no fault of the Receiving Party) in the public domain at or subsequent to the time the Disclosing Party disclosed the information to the Receiving Party; (ii) was rightfully in the Receiving Party's possession free of any confidentiality obligation at or subsequent to the time the Disclosing Party disclosed it to the Receiving Party; or (iii) was developed by the Receiving Party's employees or agents independent of, and without reference to, any information communicated to the Receiving Party by the Disclosing Party. A Confidential Information disclosure by the Receiving Party either: (A) in response to an enforceable order by a court or other governmental body; (B) as otherwise required by law; or (C) necessary to establish the rights of either party under this Agreement, shall not be a breach of this Agreement by the Receiving Party or a waiver of confidentiality for other purposes; provided, however, the Receiving Party shall provide prompt prior written notice of any such Confidential Information disclosure to the Disclosing Party (to the extent allowed by applicable law) to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

d. **Ownership and Return of Confidential Information.** The Disclosing Party's Confidential Information is and shall remain the Disclosing Party's property, and this Agreement does not grant or imply any license or other rights to the Disclosing Party's Confidential Information except as expressly set forth in this Agreement. Within 5 business days after the Disclosing Party's request, the Receiving Party will promptly either (at the Disclosing Party's election) destroy or deliver to the Disclosing Party all Confidential Information furnished to the Receiving Party, and the Receiving Party agrees to provide a written officer's certification of the Receiving Party's compliance with the foregoing obligation.

e. **Third Party Information Disclosure.** The Disclosing Party shall not communicate any information to the Receiving Party in violation of the proprietary rights of any third party.

#### **10. Warranties.**

a. **Limited Software Warranty.** Yardi warrants that the Licensed Programs will perform substantially as specified in the Licensed Programs Documentation. Yardi does not warrant that the Licensed Programs will meet Client's requirements and expectations.

b. **Remedy for Limited Software Warranty Breach.** If Yardi breaches the warranty set forth in section 10(a) (Limited Software Warranty), Yardi agrees to use commercially reasonable efforts to modify the Licensed Programs so that the Licensed Programs conform to that warranty. If such modification is not commercially reasonable, then Yardi will notify Client and Client may terminate this Agreement. In the event Client terminates this Agreement per this section 10(b) (Remedy for Limited Software Warranty Breach), Yardi will refund to Client, on a pro-rata basis, the annual Fees paid by Client to Yardi within the year prior to the effective date of Client's termination. THE FOREGOING REMEDY IS CLIENT'S SOLE REMEDY IN THE EVENT OF A BREACH OF THE WARRANTY SET FORTH IN SECTION 10(a) (Limited Software Warranty).

c. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, YARDI DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES WITH REGARD TO THE LICENSED PROGRAMS INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

d. **Internet Performance Disclaimer.** Yardi does not and cannot control the flow of data via 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 the internet. Yardi will use commercially reasonable efforts to remedy and avoid such events, but cannot guarantee that such events will not occur. Accordingly, Yardi disclaims any liability resulting from or relating to such events.

#### **11. Damage Limitations.**

a. **Damage Waiver.** REGARDLESS OF ANY OTHER PROVISION IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, YARDI DISCLAIMS ALL OBLIGATIONS AND LIABILITIES FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE AND CONSEQUENTIAL DAMAGES, ATTORNEYS' AND EXPERTS' FEES, AND COURT COSTS (EVEN IF YARDI HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

b. **Liability Limit.** IN ADDITION TO THE LIMITATIONS OTHERWISE SET FORTH IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CLIENT AGREES THAT IN THE EVENT OF ANY CLAIM OR CAUSE OF ACTION BY CLIENT ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, YARDI'S MAXIMUM LIABILITY TO CLIENT, REGARDLESS OF THE AMOUNT OF LOSS CLIENT MAY HAVE SUFFERED, SHALL NOT EXCEED THE FEES PAID BY CLIENT TO YARDI PURSUANT TO THIS AGREEMENT WITHIN THE YEAR PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

#### **12. Ownership.**

a. **Yardi's Ownership.** Client agrees that, as between Yardi and Client, Yardi is and shall remain the sole and exclusive owner of all right, title and interest in and to the Licensed Programs, Deliverables, Yardi Cloud, Yardi Cloud Services, and Licensed Programs Documentation, and to all intellectual property rights in the foregoing. The only rights Client obtains in the Licensed Programs, Deliverables, Yardi Cloud, Yardi Cloud Services, and Licensed Programs Documentation are the licenses expressly granted to Client in this Agreement.

b. **Client's Ownership.** Yardi agrees that, as between Yardi and Client, Client is and shall remain the sole and exclusive owner of all right, title, and interest in and to Client Data. Client represents and warrants that Client has all necessary rights, title, and interest in and to all materials and/or content that Client provides for, or uploads to: (i) the database(s) associated with the Licensed Programs; (ii) the Yardi Cloud; and/or (iii) any Yardi-hosted site; including, without limitation, materials and/or content that Client provides for use on Client's RENTCafe portal(s) and documents that Client uploads to FillDocs, eDocs, or RentCafe Lease Documents (collectively, "**Client Content**"). Client acknowledges and agrees that Yardi has no responsibility or duty to review, approve, or pre-screen Client Content that Client provides for, or uploads to: (A) the database(s) associated with the Licensed Programs; (B) the Yardi Cloud; and/or (C) any Yardi-hosted site. Client grants Yardi a worldwide, non-exclusive, royalty-free license and right to use, reproduce, distribute, modify, and display Client Content in connection with Business Purposes. Client acknowledges and agrees that if a third party believes their copyright has been infringed by any Client Content, Yardi has implemented policies in accordance with the Digital Millennium Copyright Act, 17 U.S.C. Section 512, and Yardi reserves the right to remove any material found to be infringing under Yardi's aforementioned policies.

#### **13. Indemnification.**

##### **a. Yardi Indemnity.**

(i) **Indemnity.** Yardi agrees to defend, indemnify, and hold Client harmless from and against any third party claims, actions or demands alleging that Client's Use of the Yardi Cloud, Yardi Cloud Services, Licensed Programs, Licensed Programs Documentation,

and Deliverables in accordance with this Agreement's terms infringes on a third party's proprietary information, trademark, copyright, patent rights or intellectual property rights, or misappropriates a third party's trade secrets.

(ii) **Indemnity Conditions.** Yardi's defense and indemnification obligations per section 13(a)(i) (Indemnity) are conditioned upon the following: (I) Client providing Yardi with prompt written notice of any claim for which indemnification is sought; (II) Yardi having sole control of the defense and settlement of such claim, provided, however, that Client shall have the right to have any suit or proceeding monitored by counsel of Client's choice and at its expense; and (III) Client's reasonable cooperation with Yardi in the defense and settlement of the claim.

(iii) **Injunction.** If the Licensed Programs become the subject of a patent, trademark, copyright, or trade secret misappropriation or infringement claim, and such claim results – or is reasonably likely to result – in an injunction against Client's continued Use of the Licensed Programs, Yardi will: (I) replace or modify the Licensed Programs to avoid the misappropriation/infringement claim; (II) secure Client's right to continue Use of the Licensed Programs; or (III) if neither (I) or (II) is commercially practicable, either party may terminate this Agreement upon written notice to the other party.

##### **b. Client Indemnity.**

(i) **Indemnity.** Client agrees to defend, indemnify, and hold Yardi harmless from and against any third party claims, actions or demands alleging that Yardi's use, reproduction, distribution, modification, and/or display of Client Content for Business Purposes in accordance with this Agreement's terms infringes on a third party's proprietary information, trademark, copyright, patent rights or intellectual property rights, or misappropriates a third party's trade secrets.

(ii) **Indemnity Conditions.** Client's defense and indemnification obligations per section 13(b) (Indemnity) are conditioned upon the following: (I) Yardi providing Client with prompt written notice of any claim for which indemnification is sought; (II) Client having sole control of the defense and settlement of such claim, provided, however, that Yardi shall have the right to have any suit or proceeding monitored by counsel of Yardi's choice and at its expense; and (III) Yardi's reasonable cooperation with Client in the defense and settlement of the claim.

#### **14. Programming Services.**

a. **Programming Services.** Yardi provides programming services including, without limitation, database customizations, user interface customizations, database reports, database scripts and other programming services (collectively, "**Programming Services**").

b. **Programming Services Terms.** The Fees for Programming Services, if initially ordered, are set forth in Schedule A (Fee Schedule). Client will otherwise initiate Programming Service requests by providing written notice of the desired services to Yardi, and Yardi will advise Client of Yardi's availability and schedule for performing the Programming Services. Programming Services are subject to Client's written acceptance of: (i) Yardi's schedule for meeting Client's Programming Service request; and (ii) Yardi's Fees for such Programming Services.

c. **Deliverables License.** Subject to Client's full payment of all Undisputed Fees related to Programming Services, Yardi grants to Client a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited license for Designated Users to Use the Deliverables in connection with their Use of the Licensed Programs, Yardi Cloud and Yardi Cloud Services.

#### **15. Assignment.**

a. **Assignment Limitation.** Except for the exceptions specified in section 15(b) (the "**Permitted Exceptions**"), Client shall not

(either directly or indirectly) assign, sell, convey, pledge, or otherwise transfer this Agreement without first obtaining Yardi's express written consent, which Yardi shall not unreasonably withhold. Except for the Permitted Exceptions, any attempted assignment made without Yardi's prior express written consent is void and a material breach of this Agreement.

b. **Permitted Exceptions.** Subject to the conditions precedent set forth in this section 15(b) (Permitted Exceptions), Client may assign this Agreement without Yardi's prior consent and upon notice: (i) to a wholly owned subsidiary; or (ii) in connection with any merger, acquisition, or reorganization involving Client. Any assignment is subject to the following conditions: (A) Client, or Client's successor, continuing in the same type of business that Client was conducting at the time of this Agreement's execution; and (B) Client or Client's successor providing to Yardi a written ratification and assumption of this Agreement (in a form reasonably satisfactory to Yardi) concurrent with the assignment.

#### 16. **Outsourcing.**

a. **Server Location.** Yardi reserves the right to locate the virtual servers and other equipment needed to provide the Yardi Cloud either at its facilities or at the facilities of independent service providers. Yardi may change the location of the virtual servers and other equipment needed to provide the Yardi Cloud at any time during this Agreement's Term; provided that any such change of location shall not affect Yardi's obligations under this Agreement and shall not interrupt Client's access to the Yardi Cloud, Client Data, and Licensed Programs.

#### 17. **Mediation.**

a. **Mediation Request; Condition Precedent.** In the event of a dispute arising out of or related to this Agreement which the parties are unable to resolve through direct negotiation, either party may serve upon the other at its principal place of business a request for mediation. Neither party may file an action against the other in any court, or initiate any other legal proceeding, unless and until the party seeking to do so has first requested a mediation hearing and made a good faith effort to complete the mediation process provided in this Agreement.

b. **Mediation Process.** The parties will select a neutral, independent mediator with experience in the relevant subject matter by the rules of the office of the Judicial Arbitration and Mediation Service (JAMS) closest to the mediation venue. The parties shall conduct the mediation not less than 10 or more than 20 days from the date the party requesting mediation gives notice of the request for mediation to the other party. The parties shall conduct the mediation in Santa Barbara, California. The parties shall equally bear the mediation costs.

c. **Mediation Confidentiality.** The parties shall maintain the mediation proceedings in confidence and shall not disclose to third persons the statements made in mediation by the other parties or the mediator. The mediation confidentiality provisions of California Evidence Code sections 1115 – 1128 shall apply to the mediation proceedings.

d. **Mediation Statements; Attendee Authority.** At least 5 days before the date of the mediation, each party shall provide the mediator and the other party with a statement of its position and copies of supporting documents. Each party shall send to the mediation a person who has authority to bind the party.

e. **Non-Binding.** If a party participates in good faith in a mediation and is dissatisfied with the outcome, that party may then invoke all legal rights and remedies available to the party at law or in equity.

#### 18. **General Provisions.**

a. **Independent Contractor Status.** The parties agree that they are independent contractors and nothing in this Agreement is intended to make the parties partners, agents, joint venturers, or any other form of joint enterprise, or to make the employees, agents, or representatives of one of the parties into employees, agents, or representatives of the other party. No party to this Agreement shall have any express or implied right or authority to assume or create any obligations on behalf of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

b. **Governing Law.** This Agreement shall be governed and determined by the laws of the United States and the State of California as such laws are applied to agreements made and performed entirely within the State of California.

c. **Venue.** Any action or proceeding related to or arising out of this Agreement shall be resolved only in a court of competent jurisdiction in the City of Santa Barbara, State of California (or the court of competent jurisdiction closest to the City of Santa Barbara, CA if no court of competent jurisdiction resides in the City of Santa Barbara, CA), and the parties consent to the personal jurisdiction of such courts and expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

#### d. **Injunctive Relief.**

(i) **Yardi Injunctive Relief.** The parties acknowledge and agree that, if Client breaches any of its obligations under sections 2(a) (Licenses), 2(b) (Restrictions), 9 (Confidentiality) or 15 (Assignment), Yardi might incur irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Client breaches any provision of sections 2(a) (Licenses), 2(b) (Restrictions), 9 (Confidentiality), or 15 (Assignment) Yardi may seek specific performance of Client's obligations under those sections and injunctive relief against any further violations of those sections.

(ii) **Client Injunctive Relief.** The parties acknowledge and agree that, if Yardi breaches any of its obligations under section 9 (Confidentiality) Client might incur irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Yardi breaches any provision of section 9 (Confidentiality) Client may seek specific performance of Yardi's obligations under that section and injunctive relief against any further violations of that section.

e. **Binding Effect.** This Agreement is binding on and inures to the benefit of the parties and their permitted assigns, successors, and legal representatives.

#### f. **Notices.**

(i) The parties shall deliver any notice required by this Agreement by personal delivery, certified U.S. Mail return receipt requested, or established, reputable expedited delivery carrier providing proof of delivery service, and will be deemed given upon confirmed delivery to the party to whom it is intended at its record address. The record addresses of the parties are set forth below.

#### (ii) If to Client:

Attn: Geof Bartell  
SAN DIEGO HOUSING COMMISSION  
1122 Broadway, Ste 300  
San Diego, CA 92101

#### (iii) If to Yardi:

Attn: Legal Department  
YARDI SYSTEMS, INC.  
430 S. Fairview Ave.  
Goleta, CA 93117

(iv) Either party may change its record address by giving written notice of such change to the other party.

g. **Waiver.** The waiver of a party's breach of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach.

h. **Severability.** If a court or other body of competent jurisdiction determines that any part of this Agreement is unenforceable, the remainder of this Agreement shall nevertheless remain enforceable.

i. **Headings.** This Agreement's section headings and captions are inserted for convenience only and are not intended to form a material part of this Agreement.

j. **Data Use.** Yardi may aggregate, compile, and use Client Data in order to improve, develop or enhance the Licensed Programs and/or other services offered, or to be offered, by Yardi; provided that no Client Data is identifiable as originating from, or can be traced back to, Client or a Client customer, tenant, or resident in such aggregated form.

k. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the agreement between the parties pertaining to this Agreement's subject matter and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those inducements, representations and warranties expressly set forth in this Agreement.

l. **Non-Solicit/Non-Hire.** The parties agree not to solicit (other than a general solicitation to the public) the employment of, engage as an independent contractor, or hire, any employee of the other party while such person is an employee of the other party and until such person has not been an employee of the other party for 6 months.

m. **Modification.** The parties may only modify or amend this Agreement by a writing signed by both parties; provided, however, that Client may increase Client's licensed Designated User, property, unit, etc. count (as applicable) by delivering to Yardi a signed copy of Yardi's standard, approved form for such changes.

n. **Force Majeure.** Neither party shall be liable under this Agreement for failure or delay in performance caused by a Force Majeure Event. If a Force Majeure Event occurs, the party affected shall use commercially reasonable efforts to resume the performance excused by the Force Majeure Event.

o. **Right to Audit and Compliance.** In accordance with Yardi's obligations to credit bureaus, credit reporting agencies, and including Yardi's obligation to help prevent and detect potentially fraudulent and/or suspicious activity, Client acknowledges and agrees that Yardi may conduct random as well as regular monitoring of users' access to and use of the Yardi Cloud and Licensed

Programs as they relate to this Agreement in order to validate that users are accessing and using the Yardi Cloud and Licensed Programs for legitimate purposes and in accord with this Agreement. Additionally, pursuant to any obligations Yardi has, or may have, under any laws or regulations concerning the prevention of identity theft, financial fraud, money laundering, terrorist financing, etc., Client agrees to comply with any standard Yardi 'know-your-client' requirements, processes, and/or procedures.

p. **Publicity.** Client agrees that Yardi may use Client's name and logo in client listings and Yardi marketing material upon Client's approval.

q. **Signature; Counterparts.** This Agreement is not binding on the parties until both parties have signed it and have received a copy signed by the other party. However, both signatures need not appear on the same copy of this Agreement, so long as both signed copies have identical contents. The parties may transmit signatures on this Agreement by electronic transmission, which shall be binding upon the parties. Counterparts with original signatures shall be provided to the other party within 5 days of electronic transmission; however, the failure to provide the original counterpart shall have no effect on this Agreement's enforceability or binding nature. If executed in counterparts, this Agreement will be as effective as if simultaneously executed.

**SAN DIEGO HOUSING COMMISSION ("Client")**

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**YARDI SYSTEMS, INC. ("Yardi")**

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Rev. 050622

**SCHEDULE A**

**Fee Schedule**

**Yardi Pin #: 100043171**

**Yardi Order #: 317914**

Annual Fees						
Description	Unit of Measure (UOM)	Count	\$/UOM	\$/UOM Concession	Net \$/UOM	Annual Fee
Voyager SaaS Private Cloud Annual Fee	each	1	\$75,000.00	(\$43,600.00)	\$31,400.00	\$31,400.00
Voyager SaaS Private Cloud PHA Property Management	Unit	19,000	\$30.00	(\$13.71)	\$16.29	\$309,510.00
Voyager SaaS Private Cloud PHA Property Management	Unit	2,344	\$30.00	(\$30.00)	\$0.00	\$0.00
Budgeting & Forecasting	Unit	21,344	\$5.00	(\$5.00)	\$0.00	\$0.00
Inspector General	Unit	21,344	\$2.00	(\$2.00)	\$0.00	\$0.00
Procure to Pay	Unit	21,344	\$10.00	(\$4.86)	\$5.14	\$109,708.16
RentCafe PHA Portal Package	Unit	14,000	\$24.00	(\$10.06)	\$13.94	\$195,160.00
RentCafe PHA Portal Package	Unit	5,344	\$24.00	(\$24.00)	\$0.00	\$0.00
RentBureau Application	each	1	included			included
<b>Total</b>						<b>\$645,778.16</b>

Monthly Fees				
Description	UOM	Count	\$/UOM	Monthly Fee
Payment Processing v2	transaction	TBD	per PPv2 Fees	TBD
<b>Total</b>				<b>TBD</b>

One-Time Concessions	
Description	Concession
Total Strategic One-Time Concession	<b>(\$50,000.00)</b>

Total Fees Due	
Annual Fee	\$645,778.16
Monthly Fee	TBD billed monthly
One-Time Concession	<b>(\$50,000.00)</b>
Sub-Total	\$595,778.16
Sales Tax	as applicable
<b>Total Due \$595,778.16</b>	

**Additional Terms**

- PAYMENT TERMS (excluding applicable taxes):** 100% payable upon execution of this Agreement.
- Client may request future paperwork to increase/decrease the licensed Unit count by a minimum of 25 Units. Client may access Yardi Client Central to increase/decrease the licensed Unit count online without a minimum.
- Additional terms are set forth in the following schedules to this Agreement:  
 B –Voyager Licensed Program Private Yardi Cloud, Hardware, Services and Governance Schedule  
 C – Additional Terms  
 D – Data Processing  
 E – Voyager Licensed Program Yardi Cloud Service Level Agreement
- Fees are subject to increase on each Anniversary Date; such increases shall not exceed the percentage increase outlined by the U.S. Department of Labor (per the Bureau of Labor Statistics' Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W); U.S. City Average table) for the preceding year.

## SCHEDULE B

### Voyager Licensed Program Private Yardi Cloud, Hardware, Services and Governance Schedule

#### VPN Tunnel(s)

Yardi will allocate to Client a dedicated Voyager Licensed Program virtual local area network (vLAN) including:

1. Yardi will provide up to 3 VPN tunnel(s) for Client connection to the Voyager Licensed Program vLAN [Client acknowledges and agrees that it is Client's responsibility to maintain Client's side of the VPN tunnel(s) to the Private Yardi Cloud];

#### Data and File Management

Yardi will provide data and file management services for the Voyager Licensed Program Private Yardi Cloud per the following guidelines:

1. Voyager Licensed Program production database backup files will be maintained for 14 days on a server accessible by Client via secure transfer server from which Client may retrieve the Voyager Licensed Program database backups at any time;
2. Voyager Licensed Program production data will be replicated in near-real-time both locally within the Voyager Licensed Program Private Yardi Cloud, as well as to a separate, off-site disaster recovery location; and
3. Yardi will allocate to Client a dedicated Voyager Licensed Program vLAN within the off-site, disaster recovery location.

#### Licensed Programs Support and Governance of Use

Yardi will provide consulting and technical support for the Private Yardi Cloud and the Licensed Programs per the following guidelines. Yardi is not responsible for the use of the Private Yardi Cloud and its related software and hardware components outside of the specific parameters defined in this Voyager Licensed Program Private Yardi Cloud, Hardware, Services and Governance Schedule.

1. Implementation, consulting and support of the Licensed Programs and the Licensed Programs' deployed components, where applicable.

#### Annual Fees Include

Client's annual Fees include access to the Yardi Cloud, Licensed Programs, Licensed Programs updates/upgrades, and 1 application support hour per \$1,000.00 of Client's annual Fees. Clients installing the Voyager Licensed Program for the first time shall receive 35 additional application support hours for the first year only (i.e., until Client's first Anniversary Date) at no additional charge. Yardi will debit all application support services (in ¼-hour increments with a ¼-hour minimum) against Client's above-noted application support allotment except when related to a Software Error. "Software Error" means a reproducible failure of the Voyager Licensed Program to materially perform as specified in the Voyager Licensed Programs Documentation. Yardi will provide a single, dedicated, data center-specific, Voyager Licensed Program virtual local area network (vLAN). Client acknowledges that data preparation and post conversion data clean-up is inherent in any data conversion, and such additional efforts associated with a Client data conversion – if performed by Yardi – will be debited against Client's application support service allotment. Notwithstanding the multi-year Term set forth in the Agreement, Client's annual Fees and included annual application support allotment apply for annual periods ending on each Anniversary Date, and shall not include unused application support time from prior annual periods. If Client needs additional application support hours at any time, Client may purchase additional hours at Yardi's then-current prevailing application support rate at the time Client needs the hours.

## SCHEDULE C

### Additional Terms

#### Product Terms:

1. **Payment Processing v2:** Client has read, understood, and agrees to be bound by the additional payment processing terms and conditions set forth at [https://clientcentral.yardi.com/core\\_custompage/Payment-Processing-PP2-PayFac](https://clientcentral.yardi.com/core_custompage/Payment-Processing-PP2-PayFac) and incorporated into this Agreement by this reference, as they may be amended from time to time (the "**Payment Processing Terms**"). Client agrees that such Payment Processing Terms shall govern Client's use of Yardi's Payment Services, CHECKscan, and Walk-In Rent Collection/Rent Payment Services. Client's specific pricing, below, shall take precedence over that pricing outlined in the Payment Processing Terms, so long as this section remains in effect. Client shall implement Payment Processing v2 for **21,344** Units.

- a. **Definitions.**

- (1) "**ACH**" means a nationwide funds transfer network that enables participating financial institutions to electronically credit, debit and settle entries to bank accounts.
- (2) "**Chargeback**" means a Transaction that is disputed at the request of either the User or by the User's card issuer. A Chargeback will cause the amount of the original sale and a Chargeback fee to be deducted from the Client's bank account.
- (3) "**Check 21**" means the Check Clearing for the 21<sup>st</sup> Century (Check 21) Act and all regulations pertaining to the Check 21 Act.
- (4) "**CHECKscan**" means the process by which paper checks are scanned and converted into an electronic form for payment and automatically recorded within the software.
- (5) "**Check Bill-Pay Payments**" means a payment made by the Check 21 payment services provided by Yardi and (if applicable) JHA MC pursuant to these Payment Processing Terms.
- (6) "**Payment Services**" means Yardi's online payment and payment processing services with respect to Bill-Pay Payments and User charges made using Payment Network-branded payment methods and ACH methods.
- (7) "**Retrieval Fee**" means a request made by a User for a sales draft or supporting documentation in order to substantiate a Transaction.
- (8) "**Third Party Payment Services (TPPS)**" means any non-Yardi online payment services designated by Yardi as supported by Yardi with respect to Bill-Pay Payments and User charges made using Payment Network branded payment methods and ACH methods.
- (9) "**Transaction**" means a debit or credit submitted for processing by a User, including but not limited to prospective tenant application fees, tenant rent payments, other document fees, applicable service fees, and resubmission of rejected items, but not including a Bill-Pay Payment.
- (10) "**Users**" means tenants and prospective tenants managed by Client, who make a Transaction as defined above. With respect to CONDOCafé Certificates only, Users shall mean tenants and prospective tenants managed by Client, and other third parties including but not limited to real estate brokers and attorneys who make a Transaction as defined above.
- (11) "**Yardi Bill-Pay Payment**" and "**Bill-Pay Payment**" means the ACH or physical check payment made through Payment Processing v2.

- b. **Fees.** In the event Client upgrades from Payment Processing Transactions to Payment Processing v2, Yardi shall continue to charge Client for Transactions at the rate previously negotiated for Payment Processing Transactions for a period of 3 months from the effective date of the document in which Payment Processing v2 was initially licensed to allow Client to implement the upgrade. In the event Client implements the upgrade in less than 3 months, Transactions shall begin to be billed at the Payment Processing v2 rates outlined below once the upgrade goes live.

- (1) **Client-Paid Transactions:** Client acknowledges and agrees to pay the following Fees for each of the following Transactions or Bill-Pay Payment type (which apply per Transaction or Bill-Pay Payment):

**Payment Processing (for accounts receivable):**

- a) **CHECKscan: \$0.40**
- b) **ACH: \$0.95**
- c) **Signature Debit Cards:** see online terms provided in the hyperlink above
- d) **Credit Cards:** see online terms provided in the hyperlink above

- e) **Monthly transaction minimum:** If Client fails to meet the monthly transaction minimum outlined in Schedule A (Fee Schedule), if applicable, Yardi shall charge Client for the remaining Transactions (i.e., the Transactions required to satisfy the aforementioned monthly minimum) at the CHECKscan rate outlined above. Client will be invoiced for actual Transactions processed for 9 months commencing on the effective date of the document in which Payment Processing v2 was initially licensed. Thereafter, Client will be invoiced the monthly minimum or actual usage, whichever is greater.

**Yardi Bill-Pay (for accounts payable):**

- a) **ACH and Check Writing via Check Bill-Pay Payments: \$1.00**

**TPPS (for accounts receivable):**

- a) **TPPS Change of Service: \$950.00** per addition/change to a third party payment processor
- b) **TPPS CHECKscan:** see Payment Processing (for accounts receivables) above
- c) **TPPS ACH:** see Payment Processing (for accounts receivables) above

**TPPS (for accounts payable):**

- a) **TPPS Change of Service: \$950.00** per addition/change to a third party payment processor
- b) **TPPS ACH and Check Writing via Check Bill-Pay Payments:** see Yardi Bill-Pay (for accounts payable) above

- (2) **Tenant-Paid Transactions.** (i) Client desires that Yardi assess each User directly any Fees applicable to each User-initiated Transaction. (ii) Notwithstanding any other term to the contrary, for all Transactions that are designated by Client as the responsibility of User, any fees or charges imposed by a processing institution, correspondent bank, merchant bank or other institution other than the original Transaction Fee (such as Chargebacks and Retrieval Fees) shall at all times be the sole responsibility of Client and not User, which Client acknowledges and agrees to pay.
    - (3) The Fees set forth above may be amended by Yardi in its reasonable sole discretion. Yardi will, upon Client's written request, provide Client with the then-current schedule of Fees.
2. **RentBureau Application:**
  - a. Client acknowledges and agrees that the RentBureau application shall facilitate the collection, use and exchange of data to and/or from Client's Voyager database, which may be stored and used, in an aggregated form, for any reason. Client further acknowledges and agrees that: (a) the use of any non-aggregated data shall only be permitted in accordance with the Experian Data Corp. Data Release Agreement or its equivalent (the "DRA") and any other applicable agreement executed by and between Client and Experian Data Corp. by and through its RentBureau division ("Experian"); (b) the RentBureau application is made available through Yardi at Client's request and is strictly subject to Client's express acknowledgement that it has executed and will abide by the terms and conditions of the Agreement and all applicable Experian agreements, terms and conditions; and that (c) Experian, not Yardi, is solely responsible for all aspects of the RentBureau application and any Experian products and services related thereto (the "Experian Services"), including performance and functionality.
  - b. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (A) YARDI MAKES NO REPRESENTATIONS OR WARRANTIES OR OF ANY KIND ABOUT THE RENTBUREAU APPLICATION OR ANY EXPERIAN SERVICES; (B) YARDI SHALL NOT BE RESPONSIBLE IN ANY WAY WHATSOEVER FOR ANY ERRORS, HARDWARE FAILURES, SOFTWARE FAILURES, SECURITY FAILURES, OR DATA LOSS/CORRUPTION RELATED TO OR CAUSED BY THE RENTBUREAU APPLICATION OR ANY EXPERIAN SERVICES; (C) UNDER NO CIRCUMSTANCES SHALL YARDI HAVE ANY OBLIGATION OR LIABILITY TO CLIENT WITH RESPECT TO THE RENTBUREAU APPLICATION OR ANY EXPERIAN SERVICES FOR ANY DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO ACTUAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS OR DAMAGES TO BUSINESS REPUTATION), REGARDLESS OF HOW SUCH DAMAGES ARISE AND REGARDLESS OF WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE; AND (D) YARDI MAY, IN ITS SOLE DISCRETION, SUSPEND ACCESS TO OR REMOVE THE RENTBUREAU APPLICATION AT ANY TIME AND FOR ANY REASON.
3. **RentCafe PHA Portal Package** includes the following:
  - a. RentCafe PHA Online Applications, RentCafe PHA Applicant and Resident Portals, RentCafe PHA Online Certifications, RentCafe PHA Landlord Portal, and the RentCafe Affordable Portal Package.
  - b. Leading practice Workflows and Forms (which are not subject to customizations). Any changes to the Workflows require further scoping between Yardi and Client and a Custom Programming Request.

**Allotted DUs included:**

1. Agreement includes unlimited residential DUs

**Concession Details:**

1. Recurring concessions outlined in Schedule A (Fee Schedule) are contingent upon Client maintaining the initial licensing and associated Fee indicated for the corresponding product. If Client reduces licensing which decreases a product's Fee by more than 10%, the product's concession shall be reduced in correlation to the Fee reduction. For example, if Client reduces a product's Fee by 50%, the annual concession for that product shall be reduced by 50%.
2. For products licensed at multiple rates: In the event Client's portfolio is expanded, additional licenses shall be added to invoicing at the highest rate being charged for the applicable product. In the event Client's portfolio is reduced, the lowest rates being charged for the applicable product shall be the first rates removed from invoicing.

**Other Terms:**

1. Yardi licenses/services are sold separately unless otherwise stated.
2. Client acknowledges that additional licenses/services [i.e., in addition to those initially set forth in Schedule A (Fee Schedule)] require additional Fees at Client's then-current, cumulative, CPI-increased base rate (which base rate shall be annually CPI-increased upon invoicing approximately 60 days prior to each Anniversary Date) for the additional licenses/services at the time of Client's request. Subject to: (i) at least 5 business days' prior written notice from Client; (ii) Client's execution of an amendment to the Agreement; and (iii) payment of additional Fees, Yardi will increase Client's licensed maximum number of licenses.
3. Yardi reserves the right to audit Client's database at any time solely to confirm the scope of Client's use of the Licensed Programs relative to Client's contractual license.
4. In accord with Schedule A (Fee Schedule), Client may add additional licenses/services at any time, and any associated Annual Fee increases shall be prorated from the period the addition is made through the end of Client's then-current billing cycle. Client may also remove licenses/services upon the first day of each billing period (i.e., reduce Client's Annual Fee by such removals) through the execution of future addenda or online orders placed through Yardi Client Central.
5. Client acknowledges and agrees that ETL for 1 foreign database is included with the core system, and it is to be used solely for the purpose of onboarding property data into the Client's database and with any other Yardi product for which ETL is recommended for use by Yardi to enhance product function. The foreign database included is not to be used as an interfacing tool with external systems except when ETL services are purchased separately.

**SCHEDULE D**

**DATA PROCESSING**

CLIENT HAS READ, UNDERSTOOD, AND AGREES TO BE BOUND BY THE ADDITIONAL TERMS AND CONDITIONS IN THE LATEST VERSION OF THE DATA PROCESSING ADDENDUM (DPA) POSTED AT [HTTPS://RESOURCES.YARDI.COM/LEGAL/DATA-PROCESSING-ADDENDUM/](https://resources.yardi.com/legal/data-processing-addendum/) (WHICH WILL BE UPDATED FROM TIME TO TIME AND IS INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE), AND ALLOWS CLIENT TO USE YARDI'S PRIVACY AND DATA COMPLIANCE TOOLS.



## SCHEDULE E

### Voyager Licensed Program Yardi Cloud Service Level Agreement

During the Term, and subject to this Agreement's terms, Yardi's metrics are to meet the following Voyager Licensed Program Yardi Cloud service levels.

#### SECTION I – Performance Metrics

##### 1. Voyager Licensed Program Yardi Cloud Availability

“**Yardi Cloud Availability**” is a cumulative measure of the Voyager Licensed Program production environment's availability in the Yardi Cloud excepting where such availability is affected by Client's activities, routines, etc. in, or connecting to, the Yardi Cloud.

##### Scheduled Operational Downtime Hours (Relative to Voyager Licensed Program Yardi Cloud Availability)

Yardi has standing Voyager Licensed Program Yardi Cloud maintenance/repair/backup hours from 11:00 pm (local time at the data center) each Sunday - Saturday until 1:00 am (local time at the data center) each succeeding day, and an additional 2 hours for the maintenance/repair/backup hours beginning at 11:00 pm (local time at the data center) each Saturday night ending at 3:00 am (local time at the data center) each succeeding Sunday (collectively, “**Standing Hours**”); provided, however, that while Yardi conducts nightly backups during Standing Hours which may affect Voyager Licensed Program performance during the backup processes, Voyager Licensed Program Yardi Cloud unavailability for maintenance/repair during Standing Hours will not exceed 8 hours in any given week. Subject to Force Majeure Events, any Voyager Licensed Program Yardi Cloud unavailability affecting the Voyager production environment and experienced outside Standing Hours or in excess of 8 hours in any given week, will be counted against the Yardi Cloud Availability except where such availability is affected by Client's activities, routines, etc. in, or connecting to, the Voyager Licensed Program Yardi Cloud (and such time shall be, “**Yardi Cloud Unavailability**”).

**Service Level** – Yardi's metric is to deliver at least 99.9% Yardi Cloud Availability.

**Measurement** –Yardi Cloud Availability is measured by taking the potential number of minutes in a given month (“**User Minutes**”), minus any experienced Yardi Cloud Unavailability, divided by User Minutes, multiplied by 100.

$$\frac{\text{User Minutes} - \text{Yardi Cloud Unavailability}}{\text{User Minutes}} \times 100 = \%$$

**Measurement Period** – Calendar Month.

##### 2. Performance Credit Relative to Yardi Cloud Availability

**A. Performance Credits** -- The performance credit for the Yardi Cloud Availability metric, when not met, and when Yardi Cloud Availability was not affected by Client's activities, routines, etc. in, or connecting to, the Yardi Cloud, will be as follows:

1 day's annual Fees (i.e., Client's then-current annual fee pursuant to this Agreement - to the extent paid by Client to Yardi - divided by 365) for each period of at least 15 minutes, and up to 4 hours, during a given calendar month that Yardi falls below its monthly 99.9% service level [not to exceed 5 days' annual Fees (i.e., Client's then-current annual fee pursuant to this Agreement - to the extent paid by Client to Yardi - divided by 365, and multiplied by 5) in any given calendar month].

**B. Performance Credits Condition** – Client must request performance credits within 72 hours of the given outage for which performance credits are sought.

#### SECTION II – General Notes

1. **General.** Database backup processes (SSAE18 control objective 2.4), database backup processes testing (SSAE18 control objective 2.4), network penetration testing (SSAE18 control objective 5.1), disaster recovery (SSAE18 Control Objective 2.4), disaster recovery testing (SSAE18 control objective 2.4), and general security matters (SSAE18 control objectives 3.1 and 5.1, and the SSAE18, generally) are documented, audited (at least annually), and reported upon in accord with the American Institute of Certified Public Accountants' (“**AICPA**”) Statement on Standards for Attestation Engagements No. 18 or a successor AICPA standard if SSAE18 is no longer a current and industry standard AICPA standard (collectively, “**SSAE18**”) with respect to the Yardi Cloud and Yardi Cloud Services. Upon Client's request, Yardi agrees to provide a copy of its then-current SSAE18 audit report for Client's review.

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