

Subscription Agreement



This Subscription Agreement (the "Agreement") together with any appendices referenced herein and attached hereto, is dated the 18th day of September, 2020

BETWEEN:

eSCRIBE Software Ltd. ("eSCRIBE")

- and -

The City of Chula Vista ("Customer")

WHEREAS, eSCRIBE (and/or its affiliates) has developed certain proprietary software applications and platforms for the purpose of meeting, board and agenda automation which it makes available as services via the internet (the "Services"); and

WHEREAS, In order to procure these services Customer solicited proposals in accordance with Chula Vista Municipal Code Section 2.56.080 for contracts exceeding \$100,000, received 7 proposals, and selected eSCRIBE as the most qualified amongst those submitting; and

WHEREAS, eSCRIBE warrants and represents that is it experienced and staffed in a manner such that can deliver the services required of eSCRIBE to Customer in accordance with the time frames and the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable the Customer desires to use the Services in accordance with the terms and conditions of this Agreement.

Definitions

"Customer Data" shall mean electronic data and information uploaded or inputted to the Services or created, generated or produced by the Customer during Use of the Services.

"Data Storage: refers to the online electronic secure storage of Customer Data during the Use of the Services.

"Documentation" includes any and all printed or electronic guides and manuals, including sales, marketing and training materials provided by eSCRIBE for the proper Use of the Services.

"Implementation Services" refers to the configuration and training services, and other services set out in Appendix C.

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“**Location**” refers to the location of the Customer entities authorized to Use the Services as set out in Appendix D.

“**Personal Information**” means information which relates to an identified or identifiable individual, and includes any information defined from time to time as “personal information” under applicable State or Federal privacy legislation.

“**Support Services**” shall mean the technical support and product updates for the Services as made available under eSCRIBE's Support Services set out in Appendix B.

“**Taxes**” refers to all present or future sales tax, consumption tax and similar taxes.

“**Use**” shall mean the ability for the Customer to login with username and password and access the Services via the internet.

1. Services

- a. Required Services. eSCRIBE agrees to perform the services as described in Appendix A, and implement for the Customer the implementation services as described in Appendix C, incorporated into the Agreement by this reference, with timely delivery being of the essence for this Agreement. The services, Documentation, and/or Deliverables described in Appendix A and Appendix C shall be referred to herein as the “Required Services.”
- b. Reductions in Services. Customer may independently, or upon request from eSCRIBE, from time to time, reduce the Services to be provided by eSCRIBE under this Agreement. Upon doing so, Customer and eSCRIBE agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.
- c. Additional Services. Subject to compliance with the City's Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, Customer may request eSCRIBE provide additional services related to the Required Services (“Additional Services”). If so, Customer and eSCRIBE agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once

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added to Exhibit A, "Additional Services" shall also become "Required Services" for purposes of this Agreement.

- d. **Standard of Care.** eSCRIBE expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.
- e. **No Waiver of Standard of Care.** Where approval by Customer is required, it is understood to be conceptual approval only and does not relieve eSCRIBE of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of eSCRIBE or its subcontractors.
- f. eSCRIBE shall provide the Implementation Services in a professional, timely, and competent manner and in accordance with industry standards. eSCRIBE shall make every effort and take all appropriate steps to carry out the Implementation Services to the reasonable satisfaction of the Customer, in such a manner as is in the best interests of the Customer, and in compliance with all federal and state laws, local by-laws, and policies and procedures of the Customer.
- g. eSCRIBE shall make the Services available twenty-four (24) hours a day, seven (7) days a week, and will credit the Customer 10% of the equivalent monthly Subscription Fees listed in Appendix A for each three (3) hour period for which the Services are unavailable for Use by the Customer in a monthly period. "Uptime" and "Downtime" is recorded and calculated on a monthly basis and will be applied as a credit towards the annual Subscription Fees listed in Appendix A, for the next year. Downtime does not include scheduled outages for software updates, server or network maintenance (which will generally be scheduled for weekends or after midnight eastern time), notification of which will be provided to the Customer's designated Support Contacts five (5) days in advance. Unsuitable Customer operating environment, including, but not limited to, inadequate end user computer configuration, installed third party software, internet connection issues or general internet congestion issues are excluded from any downtime calculations. Account credits of eSCRIBE for any twelve (12) month period is hereby limited to a maximum of twenty percent (20%) of the annual Subscription Fees listed in Appendix A paid by the Customer during the prior twelve (12) month period up to the outage. Downtime is measured from the time that a trouble ticket is registered with Support Services by the Customer for the Services being unavailable for Use or the time that eSCRIBE becomes aware

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- that the Services are unavailable for Use (whichever is earlier), to the time the problem is resolved and the Services are restored. In the event that eSCRIBE becomes aware that the Services are unavailable for Use, eSCRIBE shall notify the Customer immediately.
- h. The Customer may not make available the Service for Use by any third parties.
 - i. The Customer may not directly or indirectly through any third parties attempt to reverse-engineer or de-compile the operation of the Services in any manner through current or future available technologies, except that Customer may modify the Customer Data to the extent and in the manner described in the Documentation.
 - j. Customer Data, which shall be hosted in The United States along with all copies and backups, together with all intellectual property rights therein, will belong to the Customer and the Customer remains the sole and exclusive owner of the Customer Data. During the Term of this Agreement, the Customer may retrieve such data from the Services at any time and, within ten (10) days of the Customer's request, eSCRIBE will make available any Customer Data that is stored in native file format (Word, Excel, PowerPoint, PDF, MP4). eSCRIBE shall not access, use, disclose, sell, rent, transfer or copy the Customer Data for any purpose (or authorize or permit a third party to perform such acts) other than as required to perform eSCRIBE's obligations pursuant to this Agreement.
 - k. At the execution of this Agreement and during the Term, eSCRIBE represents and warrants to and in favor of the Customer and acknowledges that the Customer is relying thereon as follows:
 - i. eSCRIBE has the legal capacity and right to execute this Agreement and carry out and observe the provisions thereof to be performed or observed by eSCRIBE hereunder and to take all actions pursuant hereto and all necessary approvals have been given or obtained to authorize eSCRIBE to execute this Agreement and perform thereunder and to take all actions required pursuant hereto;
 - ii. eSCRIBE's execution, delivery, and performance of this Agreement will not constitute a violation of any judgment, order or decree, a default under any agreement by which it or any of its assets are bound or an event that would, with notice or lapse of time, constitute such a default;
 - iii. eSCRIBE has the full and unencumbered right to grant to the Customer access to and use of the Services as provided in this Agreement, either through ownership or license, including

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upgrades, updates, improvements, modifications or enhancements to the Services including any third party components embedded in the Services, and that the rights granted herein will not violate the terms of its agreements with any third parties;

- iv. The Implementation Services and the Customer's access to or use of the Required Services or of the Documentation do not and will not conflict with, infringe upon or violate and are not alleged by any person to conflict with, infringe upon or violate the intellectual property rights of any other person. In addition, there are no existing or threatened legal proceedings brought against eSCRIBE in respect of the Services, the Documentation or the Implementation Services, or eSCRIBE's right to grant others the right to access and use the Services or the Documentation. Should eSCRIBE become aware of any such conflict, infringement or violation or potential conflict, infringement or violation, eSCRIBE will notify the Customer immediately;
 - v. eSCRIBE's proprietary software applications and platforms are free of spyware and malware of any kind;
 - vi. The Required Services and the Implementation Services provided by eSCRIBE hereunder will comply with the service and functional specifications set out in this Agreement, including the Documentation;
 - vii. eSCRIBE will provide personnel who have the necessary technical skills, qualifications, experience, and training to provide information and expertise to the Customer in accordance with this Agreement; and
 - viii. The Documentation is complete and will allow the Customer to access and use the Required Services.
- I. eSCRIBE shall retain such records in respect of the provision of the Implementation Services or of the Services and the fulfillment of its obligations hereunder as the Customer may from time to time reasonably require and shall make such records available at any time for inspection by the representatives of the Customer.

2. Support Services

- a. During the Term of this Agreement, eSCRIBE will provide the Customer the Support Services as described in Appendix B.

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3. Fees

- a. The first year's Subscription Fees as described in Appendix A and the Implementation Fees as described in Appendix C, are due upon the date of this Agreement. The Subscription Fees are due annually thereafter, and will increase from the previous year's Subscription Fees by two percent (2%).
- b. Implementation Fees are for remote personnel. Optionally, should the Customer wish to have eSCRIBE provide onsite training, additional travel and living expenses would apply.
- c. All fees and other charges set forth in this Agreement are exclusive of any and all applicable Taxes due to eSCRIBE from Customer. Payment of all applicable Taxes shall be the responsibility of the Customer. If any such Taxes has to be withheld under this Agreement, Customer shall increase payment under this Agreement by such amount as to ensure that eSCRIBE has received an amount equal to the payment otherwise required after such withholding or deduction.
- d. Legacy Data fees if any, will be added to the annual Subscription Fees as set out in Appendix E.
- e. All payments are due net fifteen (15) days from the date of invoice, a 2% discount will be provided by eSCRIBE for those terms
- f. All references to currency are in US Dollars.

4. Term

- a. The term of this Agreement commences on the date of this Agreement for a period of five (5) years (the "Term"), and, at the request of the Customer, can be renewed for up to five (5) additional one (1) years Terms.

5. Termination

- a. If either party is adjudged bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, makes any arrangement for the liquidation of its debts or a receiver or a receiver and manager is appointed with respect to all or any part of its assets, or commences winding up proceedings, or bankruptcy or insolvency proceedings are instituted by or against such party, and such proceedings are not removed within sixty (60) days (an "Event of Bankruptcy"), then the party affected by such an Event of Bankruptcy must immediately give

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notice thereof to the other party, and the other party at its option may terminate this Agreement upon written notice to such affected party.

- b. If this Agreement is terminated by the Customer before the end of the Term other than for a breach of this Agreement on the part of eSCRIBE, the Customer will be liable for a termination penalty amounting to 25% of the remaining Subscription Fees due to the end of the Agreement if terminated in the first year, 20% of the remaining Subscription Fees due to the end of the Agreement if terminated in the second year and 15% of the remaining Subscription Fees due to the end of the Term if terminated in the third year or subsequent year of the Agreement.
- c. Either party may terminate this Agreement by giving thirty (30) days written notice to the other party in the event that one party breaches any term, condition, violate any other covenants, agreements, or conditions of this Agreement (each a "default"), provided that the non-breaching party gives the other party notice of the default. and such default is not remedied to the non-breaching party's satisfaction within ten (10) days after delivery of such notice.
- d. Within thirty (30) days after the termination of this Agreement by Customer pursuant to section 5 (a) or section 5 (c), eSCRIBE shall refund to the Customer any Subscription Fees paid by the Customer for the period from the date of termination to the end of the Term on a pro-rated monthly basis commencing with the month following the date of termination.
- e. Within thirty (30) days after the termination or expiration of this Agreement, eSCRIBE will make available any Customer Data that is stored in native file format (Word, Excel, PowerPoint, PDF, MP4). eSCRIBE has the right to destroy all copies of Customer Data in its possession or control, after sixty (60) days, or whenever transfer of Customer Data is completed and provide the Customer with a certificate of destruction.

6. Remedies

- a. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.
- b. Service of Process. eSCRIBE agrees that it is subject to personal jurisdiction in California. ESCRIBE is a foreign corporation, formed in 2006 in Ontario Canada, and not registered with the California Secretary of State. ESCRIBE agrees to register with the California

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Secretary of State and irrevocably consents to service of process on eSCRIBE by first class mail directed to the individual and addressed listed under "For Legal Notice" in section 15(n) of this Agreement, and that such service shall be effective ten days after mailing.

7. Limitation of Liability

- a. Liability of eSCRIBE under this Agreement will be limited to the maximum amount of the annual Subscription Fees listed in Appendix A or the value of insurance listed in section 10, whichever is greater. eSCRIBE will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Customer arising out of the use or failure to use the Service.

8. Indemnity

- a. eSCRIBE shall protect, defend, indemnify and hold harmless the Customer (including its elected officials, officers, representatives, agents, employees, volunteers, and affiliates), from and against any and all claims, demands, losses, suits, damages (including indirect, special, consequential, remote, and economic damages), fees, fines, royalties, liability, and expenses (including reasonable lawyer's fees and court costs) arising out of any suit, claim or action relating to eSCRIBE's performance or non-performance of its obligations pursuant to this Agreement, including any breach of any representation or warranty, or for actual or alleged direct or contributory infringement of, or inducement to infringe, any intellectual property right relating to the Implementation Services, the Services or the Documentation or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from eSCRIBE's action. These obligations of indemnity will survive the termination or expiration of this Agreement however caused.
- b. eSCRIBE shall have no liability hereunder for any claim of intellectual property infringement based on the combination, operation or use of the Service with software, hardware or other materials not furnished or approved in writing by eSCRIBE if such infringement would have been avoided without such software, hardware or other materials.
- c. In the event the Service or a component part thereof is held by a court of competent jurisdiction, or is believed by eSCRIBE, to infringe or

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potentially infringe a third party's rights, eSCRIBE shall, with prior notice to the Customer, (i) modify, at its expense, the Service to be non-infringing; provided that such modification does not adversely affect the Service as set out in this Agreement, or (ii) obtain for Customer the right to continue using the Service in its current state at no additional expense to the Customer, or (iii) if eSCRIBE determines that neither of the foregoing options are reasonably available, eSCRIBE may terminate this Agreement and refund any prepaid Fees to the Customer for which it has not received Services.

9. Confidentiality

- a. **"Confidential Information"** means all information disclosed by one party (**the "Disclosing Party"**) to the other party (**the "Receiving Party"**), whether verbal or in writing, that is marked as confidential or that reasonably should be understood to be confidential given the nature of the information. The Customer's confidential information includes Customer Data, and eSCRIBE's confidential information includes the Services and Documentation. Confidential information of each party includes, the terms of this Agreement, as well as current and future technical specifications, product plans, features and roadmaps, business and marketing plans, customer lists and relationships, costs and pricing strategies, financial and employee information and records, as they may be disclosed by either party during the Term of this Agreement.
- b. Confidential information does not include any information that (i) is or becomes publicly available without a breach of the terms of this Agreement, (ii) is received from a third-party without breach of any obligation owed to the Disclosing Party, or (iii) the Receiving Party is entitled to disclose in response to a court order or as otherwise required by law; provided that the Receiving Party notified the Disclosing Party prior to such disclosure forthwith after receipt of such order to give the Disclosing Party time to contest such order.
- c. All Confidential Information shall remain the sole property of the Disclosing Party.
- d. The Receiving Party shall not divulge or disclose any Confidential Information communicated to or acquired by it, or disclosed by the Disclosing Party in the course of carrying out this Agreement. No Confidential Information will be used by the Receiving Party on any other project or for any other purpose without the prior written consent of the Disclosing Party, which consent may be not unreasonably withheld. The Receiving Party shall receive and store the Confidential Information with the same degree of care that it uses to protect the

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confidentiality of its own confidential information from unauthorized use, duplication or disclosure to third parties; provided such standard is no less than a reasonable standard considering the nature of the Confidential Information. Notwithstanding the foregoing, eSCRIBE acknowledges that Customer is a California chartered corporation, subject to certain public disclosure laws, including and not limited to, the California Public Records Act. As a result, if Customer determines, in its sole discretion, that it is legally required to disclose Confidential Information, eSCRIBE agrees that doing so will not constitute a breach of this Agreement.

- e. Upon termination or expiration of this Agreement, the Receiving Party shall immediately cease to use Confidential Information in any manner whatsoever, shall return to the Disclosing Party or securely destroy all Confidential Information, and shall not retain any copies of the Confidential Information.
- f. eSCRIBE agrees and acknowledges that the Customer may be subject to State or Federal privacy legislation that may be in effect during the Term of this Agreement. The provisions of this section 8(f) supplement the terms of section 8 as it pertains to Confidential Information that is "Personal Information". eSCRIBE acknowledges that in the course of its provision of the Software Services, it will be provided with and have access to Customer Data which includes "Personal Information", and that such information is confidential. eSCRIBE agrees that such Personal Information will be used solely for the purposes of performing the Software Services and that it will safeguard such Personal Information by appropriate physical and technological means, including those specified in section 13. eSCRIBE will not, other than as required to provide the Software Services, disclose, transfer, sell, assign, publish or otherwise make available the Personal Information for its own use or the use of any other person or entity, except (and provided the Customer is promptly notified so as to permit it an opportunity to object to disclosure before it takes place, if feasible) where disclosure: (i) may be required to comply with a subpoena, warrant, or court order; (ii) is requested by a government institution that has the lawful authority to obtain the Personal Information; or (iii) is otherwise required by law. In addition, the Customer will be solely responsible for responding to any request by any Customer employee or other individual for access to, or correction of, any Personal Information. eSCRIBE will notify the Customer immediately of any breach of this section 8(f).
- g. These obligations of confidentiality will survive the termination or expiration of this Agreement however caused.

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10. Non-Solicitation

The Customer agrees that during the term of this Agreement, and for a period of one year following the date of termination of this Agreement, Customer will not to attempt to obtain withdrawal from eSCRIBE of any employee or person retained or engaged by eSCRIBE in any capacity whatsoever.

11. Insurance

a. eSCRIBE shall obtain and maintain in force during the Term of this Agreement the following policies of insurance (all amounts in USD):

- i. General liability insurance insuring eSCRIBE's obligations and responsibilities with respect to the performance of Services as set out in this Agreement. The policy will be extended to include bodily injury and property damage, products and completed operations, personal and advertising injury, Implementation Services, contingent employer's liability, and contractual liability to a limit of no less than two million dollars (\$2,000,000) per occurrence. The policy will include a cross liability and severability of interest clause and be endorsed to name the Client as an additional insured;
- ii. Non-owned automobile insurance to a limit of no less than one million dollars (\$1,000,000);
- iii. If applicable, automobile insurance (OAP1) for both owned and leased vehicles with inclusive limits of no less than one million dollars (\$1,000,000); and
- iv. Errors and omissions liability insurance including Cyber coverage insuring eSCRIBE to a limit of no less than two million dollars (\$2,000,000) per claim and five million dollars (\$5,000,000) in the aggregate. The coverage under the policy will be maintained continuously during the Term of this Agreement and for an additional two (2) years after the termination or expiration of this Agreement and will cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to complete and provide the services as set out in this Agreement. Coverage under the policy will respond to, but not be limited to the following occurrences:
 - A. Privacy breach and violations as a result of but not limited to unauthorized access to or wrongful disclosure or dissemination of private information, failure to properly

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handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations regarding the collection, access, transmission, use, and accuracy. Coverage will extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defense of any regulatory action involving a breach of privacy;

- B. Network security incidents arising from system security failures such as, but not limited to, unauthorized access, theft or destruction of data, electronic security breaches, denial of service, spread of virus within eSCRIBE's computer network or other third party computer information systems and will further include expenses related to third party computer forensics;
- C. Privacy breach expenses including crisis management related to electronic and non-electronic breaches;
- D. Content or media liability including personal and advertising liability, intellectual property infringement coverage (copyright, trademark, trade name, service mark, trade dress or trade secret) arising out of media content created, produced or disseminated by eSCRIBE;
- E. Coverage for delay in performance of a contract or agreement resulting from an error or omission; and
- F. Coverage for damages resulting from dishonest and criminal acts committed by an employee of eSCRIBE.

If coverage is to be cancelled or non-renewed for any reason, eSCRIBE shall provide the Customer with ninety (90) day notice of said cancellation or non-renewal. The Customer may request an Extended Reporting Endorsement be purchased by eSCRIBE at eSCRIBE's expense. The term of the Extended Reporting Endorsement will be decided by the Customer and eSCRIBE.

- b. eSCRIBE shall ensure that all policies of insurance will:
 - i. be written with an insurer properly licensed to do business;
 - ii. contain an undertaking by the insurers to notify the Customer in writing no less than thirty (30) days prior to any termination or cancellation of coverage unless otherwise required by law; and

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- iii. be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to the Customer.
- c. Any deductible amounts will be borne by eSCRIBE.
- d. eSCRIBE shall deliver to the Customer certificates of insurance evidencing renewal or replacement of policies required under this Agreement at least fifteen (15) days prior to the expiration or replacement of the current policies without demand by the Customer.
- e. If eSCRIBE fails to maintain in force any insurance required to be maintained by it hereunder, then the Customer, without prejudice to any of its other remedies, may obtain such insurance on behalf of and at the cost of eSCRIBE.
- f. eSCRIBE and its agents, volunteers, contractors, subcontractors, employees, and insurer(s) hereby release the Customer from any and all liability or responsibility, including anyone claiming through or under them, by way of subrogation or otherwise for any loss or damage which eSCRIBE may sustain incidental to or in any way related to eSCRIBE's obligations under this Agreement.

12. Advertising

- a. Customer agrees that eSCRIBE may use and disclose Customer's name in its marketing material with prior written approval of the Customer, which will not be unreasonably withheld.

13. Trademarks

- a. Any trademarks and service marks ("Trademarks") adopted by eSCRIBE to identify the Services, Documentation and other products and services, belong to eSCRIBE. Nothing herein grants, or shall be construed to grant, to Customer any rights to such Trademarks.

14. Development Input

- a. Customer shall be entitled to provide eSCRIBE with information and feedback concerning the Service's functional requirements and product definition which eSCRIBE shall consider when formulating the product development roadmap and plans. This co-operative process between eSCRIBE and the Customer does not create any obligation upon eSCRIBE to adhere to Customer's feedback, nor does it create any ownership interest in the Services on the part of Customer should

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eSCRIBE incorporate any of Customer's suggestions into the development plan or ultimately into the Services.

15. General Provisions

- a. **Relationship of Parties.** In all matters relating to this Agreement Customer and eSCRIBE are independent contractors, and nothing in this Agreement shall be deemed to place the parties in the relationship of employer-employee, principal-agent, partners, or joint ventures.
- b. **Entire Agreement.** This Agreement, including all Appendices, is the entire Agreement between the parties and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter hereof. No amendment or modification of this Agreement shall be made except by written agreement of both parties.
- c. **Ride Along:** The terms of this Agreement may be extended for use by other parties, including: associated local governments, school boards and government agencies upon execution of an addendum outlining the associated Services and Fees applicable. This term is not intended to circumvent any procurement rules and regulations of the additional party.
- d. **No Waiver.** The failure of either party to exercise any right or the waiver by either party of any breach shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of the Agreement.
- e. **Partial Invalidity.** Should any provision of this Agreement be held to be void, invalid, or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect as though such provisions were deleted.
- f. **Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, act of government, or any other similar cause beyond the reasonable control of such party ("Force Majeure"), provided that such party gives the other party written notice thereof promptly and, in any event, within ten (10) days of discovery thereof and uses its reasonable efforts to cure the delay. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of non-performance

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exceeds ten (10) days from the receipt of notice of the Force Majeure event, the party whose performance has not been affected may, by giving written notice, immediately terminate this Agreement.

- g. **Assignment; Enurement.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party's consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party's business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement shall be null and void.
- h. **Injunctive Relief.** The parties recognize that a remedy at law for a breach of the provisions of this Agreement relating to either party's Confidential Information will not be adequate for the non-breaching party's protection, and accordingly the non-breaching party shall have the right to seek, in addition to other relief and remedies available to it, injunctive relief to enforce the provisions of this Agreement in any court of competent jurisdiction.
- i. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California, and the federal laws of The United States applicable therein.
- j. **Calendar Days.** All references to a day or days in this Agreement mean a calendar day or calendar days.
- k. **Time of the Essence.** Time is of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement will operate as a waiver of this provision.
- l. **Survival.** All obligations of the parties which expressly or by their nature survive termination or expiration of this Agreement will continue in full force and effect subsequent to and notwithstanding such termination or expiration and until they are satisfied or by their nature expire.
- m. **Headings.** Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice

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versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

- n. **Notice.** Any notice required or permitted to be sent hereunder shall be in writing and shall be sent in a manner requiring a signed receipt, such as courier delivery, or if mailed, registered or certified mail, return receipt requested. Notice is effective upon receipt. Notice to both parties shall be to the address and contact set forth below and updated from time to time.

Contact People for Contract Administration and Legal Notice, eSCRIBE
Contract Administration:

eSCRIBE Software Ltd.
Robert Treumann
204-60 Centurian Drive
Markham, ON L3R 9R2

Attention: Office of the President

Contact People for Contract Administration and Legal Notice, City
Contract Administration:

City of Chula Vista, City Clerk
Cristina Hernandez
276 Fourth Avenue, Chula Vista, CA 91910
619-409-5869
chernandez@chulavistaca.gov

For Legal Notice Copy to:

City of Chula Vista
City Attorney
276 Fourth Avenue, Chula Vista, CA 91910
619-691-5037
CityAttorney@chulavistaca.gov

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The undersigned parties hereby enter into this Agreement,

eSCRIBE Software Ltd

The City of Chula Vista

DocuSigned by:
Robert Treumann
0EB5A9555C5843B...

Signature

Signature

Robert Treumann, CEO
Authorizing Officer, Title

Maria V. Kachadorian, City Manager
Authorizing Officer, Title

APPROVED AS TO FORM

BY: _____

Glen R. Googins
City Attorney

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Appendix A – Annual Subscription Fees

eSCRIBE Annual Service and Support Fees				
Module	License Type	License Fee	Quantity	Cost
eSCRIBE Transparency Bundle	Annual	\$ 24,900	1	\$ 24,900
eSCRIBE Meeting Manager		INCL		
eSCRIBE Participant Access		INCL		
eSCRIBE Report Manager		INCL		
eSCRIBE Internet Publishing		INCL		
eSCRIBE Webcasting Plus		INCL		
eSCRIBE Vote Manager		INCL		
ADFS/Azure AD integration		INCL		
eSCRIBE Board Manager	Annual	\$ 4,540	1	\$ 4,540
eSCRIBE Public Comments/Delegation Manager	Annual	\$ 2,450	1	\$ 2,450
Spanish Webcasting Feed	Annual	\$ 7,500	1	\$ 7,500
English Closed Captioning Service	Annual	\$ 7,500	1	\$ 7,500
Mexican Spanish Closed Captioning Service	Annual	\$ 7,500	1	\$ 7,500
eSCRIBE Approval Manager	Annual	\$ 1,900	1	Value Add
eSCRIBE Participant Pro Applications	Annual	\$ 35	6	\$ 210
eSCRIBE Participant Pro Applications	Annual	\$ 50	6	Value Add
Total - Annual Software and Support Fees				\$ 54,600

Subscription Agreement



Appendix B – Support Services

Subject to the terms and conditions of this Agreement, eSCRIBE shall perform the Support Services as defined.

Definitions:

The definitions used in the Agreement are incorporated herein. In addition, the following terms shall have the following ascribed to them:

“Business Hours” means the hours during which eSCRIBE’s helpdesk is available to take live incoming calls, emails and be available to respond to the Customer’s Support Contacts, namely 8:00 a.m. to 8:00 p.m., Monday through Friday eastern time (excluding statutory holidays).

“Extended Hours” means the hours during which eSCRIBE’s helpdesk is available to take urgent calls during 8:00 p.m. to 11:00 p.m. EST, Monday through Friday eastern time (excluding statutory holidays).

“Support Contacts” means the Customer designated individuals (to be identified in the attached Problem Reporting Schedule) and any replacements designated in writing to eSCRIBE who will serve as technical liaison between eSCRIBE and Customer and who are to have technical knowledge and experience with the Services used by the Customer.

“Updates” shall mean fixes, patches, modifications, improvements to functionality or revisions to the Services and Documentation.

All other capitalized terms shall have the meanings set out in the Agreement.

Support Services:

eSCRIBE will provide the following services to Customer:

- a. Technical assistance by telephone or electronic mail.
- b. Receipt and monitoring of calls during Business Hours at eSCRIBE’s support desk.
- c. Direct access for Customer Support Contacts to eSCRIBE’s team of support technicians.
- d. Provision of any available problem solutions related to the Services
- e. Make reasonable commercial efforts to provide a response to all reported problems in the manner described in the Problem Reporting Process below.
- f. Make available any Updates to the Services and Documentation at no additional charge, subject to Customer’s responsibility for any Implementation Services fees for any new Services.

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Exclusions:

- a. Customer's third-party hardware and software not part of this Agreement.

Problem Reporting Process:

Step 1: Contact eSCRIBE using one of the following methods:

Toll free number 1-855-299-0023

Email: support@escribemeetings.com

Portal: <https://customerportal.escribemeetings.com>

Step 2: Provide the following information:

Provide Support Contact's name, location the Services are in Use, telephone number and E-mail address.

Step 3: Provide a description of the problem.

Provide as much detail, including system error messages and screen printouts, as possible. eSCRIBE assign a Priority Level based on the response matrix below.

Priority Level	Initial Response	Status Updates
1- Complete Services or business critical functions unavailable or impaired	Within 2 hours	Every 4 hours
2- Specific Services functions unavailable or impaired	Within 4 hours	Every 8 hours
3- Services operational, isolated or individual user issues	Next Business Day	As required on each reported incident

eSCRIBE shall assign a ticket number to reference the case in all future communications with Customer regarding the reported incident. Customer understands that failure to provide accurate and detailed call information as described above may increase the amount of time needed by eSCRIBE to diagnose the problem and develop a possible solution.

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Regardless of the priority assignment, Customer's problem must relate to the Services in order for Support Services to be applied hereunder. Where eSCRIBE is required to perform Support Services outside of the scope of the Agreement, including but not limited to investigations, efforts and resolutions pertaining to third party software, hardware, networks or facilities, eSCRIBE shall charge Customer at its daily Implementation Services rate for the services rendered.

Using the Customer Community Portal, customers are able to check the status of their support tickets at any time.

The case will not be closed by eSCRIBE until receipt of written confirmation from the Support Contact that the problem has been resolved. If written confirmation or feedback is not received within ten (10) business days, it will be assumed the problem has been resolved and the case will be closed.

General Support Terms:

- a. The Support Contacts will be the only persons authorized to receive the Support Services hereunder and to instruct eSCRIBE in respect of Support Services.
- b. The delivery of Support Services hereunder does not extend to: i) Inadequate Customer computer configurations, installed third party software, internet connection issues or general internet congestion issues; ii) Services which have been altered, modified or improperly configured by the Customer, its customers, or any third party without eSCRIBE's prior written consent; iii) failures related to an accident, disaster or other Force Majeure event; iv) any unauthorized use of the Services;
- c. eSCRIBE warrants that its Support Services personnel shall deliver services in a professional manner and in accordance with industry standards.
- d. Response and resolution times provided in the Problem Reporting Process or otherwise whether orally or in writing, are intended as good faith estimates, guidelines or objectives only and are not to be taken as warranties or representations.

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Appendix C – Implementation Services

Subject to the terms and conditions of this Agreement, eSCRIBE shall perform the Implementation Services as listed below.

Implementation Fees		Service Fee	Quantity	Cost
eSCRIBE Transparency Bundle Setup and Training	One time	\$ 5,000	1	\$ 5,000
Meeting Templates		NCL	2	
Report Templates (5 workflows per report)		NCL	2	
Board Manager Setup	One time	\$ 1,350	1	\$ 1,350
Project Management	Weekly	\$ 250	14	\$ 3,500
Spanish Webcasting Feed Setup	One time	\$ 1,800	1	\$ 1,800
Closed Captioning Setup and AI Training	One time	\$ 1,800	2	\$ 3,600
Granicus Data Migration	One time	\$ 3,500	1	\$ 3,500
Total - One-time Implementation Fees				\$ 18,750

Optional Services

Optional Services Fees	Fee Type	Service Fee	Quantity	Cost
Webcasting Plus Setup (additional service)	One time	\$ 1,800	1	\$ 1,800
eSCRIBE Vote Manager/RTS	Annual	\$ 7,500	1	\$ 1,800
Closed Captioning Setup (2x: English and Spanish Feed)	One time	\$ 1,800	2	\$ 3,600

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Appendix D – Authorized Customer Locations

Name	Address	Authorized Contact
Chula Vista Police Department	315 Fourth Avenue Chula Vista, CA 91910	Cristina Hernandez

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Appendix E – Legacy Data Storage Fees

Upon the completion of the initial, or any subsequent Term, eSCRIBE will measure the total Customer Data Storage in gigabytes (GB) to calculate the Legacy Data storage fees based on the following schedule:

GB	Price / GB / Year
0-50	\$ 10.00
51-100	\$ 9.50
101-150	\$ 9.00
151-200	\$ 8.50
201-300	\$ 8.00
301+	\$ 7.50

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Appendix F – Modification to Services

The Customer wishes to modify the Services as defined below, effective the ____ day of _____, 2020, in accordance with the terms and conditions of the Client Subscription Agreement (the “Agreement”),

Services Fees:

Module	Addition/Deletion	Annual Fee	Quantity	Cost
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
Total - Annual Subscription Fees				\$ -

Implementation Fees:

Training Fees	Service Fee	Quantity	Cost
			\$ -
			\$ -
Total Training Fees			\$ -
Implementation Fees	Service Fee	Quantity	Cost
			\$ -
			\$ -
			\$ -
			\$ -
Total - One-time Implementation Fees			\$ -

The first year’s Subscription Fees and the Implementation Fees are due upon the date of this Appendix, and the Subscription Fees are due annually thereafter.

The undersigned parties hereby enter into this Agreement,

eSCRIBE

Client

Signature

Signature

Robert Treumann, CEO

Authorizing Officer

Authorizing Officer

I have the authority to bind the organization

Subscription Agreement



Appendix G – Consultant Conflict of Interest Designation

The Political Reform Act¹ and the Chula Vista Conflict of Interest Code² (“Code”) require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.³

A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED⁴ from disclosure.

B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:

APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES

(Category descriptions available at

www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code.)

Name	Email Address	Applicable Designation
Enter Name of Each Individual Who Will Be Providing Service Under the Contract – <i>If individuals have different disclosure requirements, duplicate this row and complete separately for each individual</i>	Enter email address(es)	<input type="checkbox"/> A. Full Disclosure <input type="checkbox"/> B. Limited Disclosure (<i>select one or more of the categories under which the consultant shall file</i>): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification: <input type="checkbox"/> C. Excluded from Disclosure

1. Required Filers

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Consultant,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

2. Required Filing Deadlines

¹ Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

² Chula Vista Municipal Code §2.02.010-2.02.040.

³ Cal. Gov. Code §§53234, *et seq.*

⁴ CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).

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Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

3. Filing Designation

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 *2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant's requirement to comply with the disclosure requirements set forth in the Code.

Completed by: Enter City Staff Person's Name

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Appendix H – Public Agency Participation

It is intended that any other public agency (e.g. city, county, district, public, authority, public agency, municipality, or other political subdivision or California) located in the State of California has an option to procure identical equipment and/or services as set forth in this Agreement. The City of Chula Vista incurs no financial or other responsibility in connection with any attempted or actual procurement of such equipment and/or services by another agency. Any public agency that elects to pursue the option to procure identical equipment and/or services as set forth in the Agreement does so at its own risk and assumes full and sole responsibility for all administration, placing of order, making payments, and all other actions and/or omissions that relate to or are in any way connected with such attempted or actual procurement of equipment and/or services.