



CITY OF PORT ST. LUCIE

Human Resources

.....

A CITY FOR ALL AGES

MEMORANDUM

TO: Jesus Merejo, City Manager

VIA: Kristina Ciuperger, Deputy City Manager *KC*

FROM: Natalie Cabrera, Director, Human Resources *N*

DATE: March 31, 2023

SUBJECT: Learning Management System

The City contracted with KnowledgeCity in Fiscal 2019/2020 for its first Learning Management System (heretofore referred as "LMS"). In these three years, we have experienced various shortcomings with the software and service.

As it relates to the shortcomings, the most notable would be that we were promised features that were not ultimately delivered or were scaled back after time and no longer provided to us after implementation of the software. Some examples include the waitlist function, calendar invites to block appropriate time after enrolling, and seamless active directory integration, which were all touted as fulfilled among other tasks, but were not accommodated after they were not able to keep up with these features. This, coupled with slow response times in meeting our need for assistance for these and even mundane requests, made our decision to search for a more capable learning technology solution necessary.

Human Resources budgeted for a new LMS for Fiscal Year 22-23, allowing us the opportunity to upgrade to a better platform. Such an improvement in learning technology brings value to our training implementation, reporting and tracking, and providing ROI for our efforts in filling the skills gap and succession planning, providing career development opportunities for our employees, and moving our city forward in accordance with the strategic plan.

Absorb LMS differentiated themselves from other LMS vendors with the quality of their learner and administrative experience, automation and content creation ability, and platform configurability. Founded in 2003, Absorb LMS is a popular, full-featured learning system that integrates LMS with LXP (learning experience platform), authoring and analytics tools, and excels in customer support with 24/7 availability and an average support ticket response time of 2 to 24 hours. Absorb LMS includes nearly 300 titles of eLearning content, which we can leverage to supplement our own training efforts. These efforts can be made more effective through use of the authoring tool, Absorb Create, and the ability to customize and modify our resources and content to elicit practice and

feedback and allow for greater impact and change toward successful employee training and transformative experiences at all levels of our organization.

Human Resources would like to move forward with contracting with Absorb LMS to begin implementation on the back end to allow for a seamless transition between both systems with a roll out anticipated October 1st. The agreement (enclosed) has been vetted through the City's Legal, Risk and IT Departments for compliance and is ready for your signature should you approve.

NC/pc



ORDER FORM

Quote #: Q021323
Quote Expires On: Apr-01-2023

Absorb Software Inc.
#2500, 685 Centre St S,
Calgary, AB, Canada T2G 1S5
Phone: (403) 717-1971
Fax: (403) 717-1978

Client Information

City of Port St. Lucie
Jesus Merejo
121 Southwest Port Saint Lucie Boulevard
Port St. Lucie FL 34984
United States

Order Date: *Date of Signing
Service Term Start Date: **Based On Signing
Service Term: 25 Months

SALESPERSON	EMAIL	CURRENCY	PAYMENT TERMS
Jackson Oldale	jackson.oidale@absorblms.com	USD	Net 30

Subscriptions				
QTY	NAME	UNIT PRICE	PER	Total
1,200	PRO - Hosted Annual 35.00% Discount with Premium Support	18,065.00	Semi-Annual	11,742.25

One-Time Fees			
QTY	NAME	UNIT PRICE	Total
1	Onboarding fees 100.00% Discount	4,700.00	0.00
1	Single Sign-On 100.00% Discount	3,850.00	0.00
1	Scheduled Data Import 100.00% Discount	3,850.00	0.00

Additional Subscriptions				
QTY	NAME	UNIT PRICE	PER	Total
1	Absorb Create LI (1 License +) - Annual Licenses 100.00% Discount	1,500.00	Annual	0.00
750	Absorb Amplify Annual (Total Users) 55.00% Discount	4,500.00	Semi-Annual	2,025.00
1	Absorb Engage 55.00% Discount	2,637.50	Semi-Annual	1,186.87

Absorb Rate Plan Description

Absorb LMS Billing

Pricing is as follows:

Subscriptions:

- User licenses fees - your base pricing includes the number of licenses for all users shown on the first page of the order form. If your user count exceeds the number of licenses included in your user tier at any point during the billing period, you will purchase the next tier of licenses as shown in the user tier table on your order form. The purchase price for the next tier will be prorated based on the amount of time remaining in your billing period at the time of purchase.

Billing Summary	
FIRST INVOICE (One-Time Fees)	
Onboarding fees	0.00
Scheduled Data Import	0.00
Single Sign-On	0.00
Total	0.00
SECOND INVOICE (Recurring Subscription Fees)	
Absorb Create LI (1 License +) - Annual Licenses	0.00
Absorb Amplify Annual (Total Users)	2,025.00
PRO - Hosted Annual	11,742.25
Absorb Engage	1,186.87
Total	14,954.12

Annual Invoice Total : 29,908.24

* Order Date is the date of execution, and the date on which this Agreement becomes effective.

**Service Term Start Date occurs 30 Days from the date of execution of this Agreement.

One-Time Fees will be billed on the Order Date. Payment of One-Time Fees is required prior to launch of the Absorb LMS portal.

This order includes bridge of 1 months.

Contract end date of 06-03-2025

Payment Structure: Semi-annual Activation Date on 05/01/2023 1 month Bridge Deal

Year 1:

First Payment on 04/26/2023

Second Payment on 10/26/2023

Year 2:

First payment 04/26/2024

Second Payment 10/26/2024

Second Year Billing:

Subscriptions - Hosted Annual (25% discount) **\$24,097**

Absorb Engage (75% Discount) **\$1,318.75**

Absorb Create (100% Discount) **\$0.00**

Absorb Amplify Content (750 License @ 50% discount) **\$4,500**

Year two Invoice total \$29,915.75



Billed To\Sold To Contact

Last Name: Merejo
Phone:

First Name: Jesus
Email: jmerejo@cityofpsl.com

Address 121 Southwest Port Saint Lucie Boulevard
Port St. Lucie FL 34984
United States

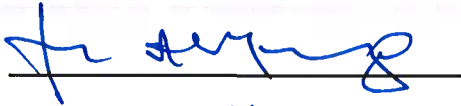
Terms & Conditions

Absorb Software Inc. is providing the Absorb LMS Service to you as provided in this Order Form and in accordance with the Absorb Software Inc. Service Terms and Conditions located at <https://absorblms.com/uploads/AbsorbServiceTermsandConditions-Masterv2.1.pdf> as amended by the First Amendment to the Agreement, attached hereto as Exhibit 1 (collectively referred to as the "Agreement"). By Signing below, you agree to be bound by the terms of the Agreement.

During the Term, the Client may elect to purchase additional Professional Services, which are outlined at <https://www.absorblms.com/legal/professional-services>

City of Port St. Lucie

Signature:



Title:

City Manager

Name (Print):

Jesus Merejo

Date:

4/4/23

Absorb Software Inc.



Signature:

Title:

Name (Print):

Date:

Total Users

STARTING UNITS	ENDING UNITS	PRICE (Prior to discounts)
1,001	1,500	18,065.00
1,501	2,000	21,556.55
2,001	2,500	23,378.24
2,501	3,000	24,744.50
3,001	4,000	28,691.47

For any questions please contact

Jackson Oldale at jackson.oldale@absorblms.com or



EXHIBIT 1

Absorb Software Inc.
#2500 – 685 Centre St. S,
Calgary, Alberta,
Canada T2G 1S5



FIRST AMENDMENT TO AGREEMENT

This First Amendment to Agreement (this "Amendment") is entered into as of _____ (the "Effective Date") by and between ABSORB SOFTWARE, INC. ("Absorb") and the CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation ("Client").

WHEREAS, Absorb and Client have entered into an agreement dated _____ (collectively referred to herein as the "Agreement"); and

WHEREAS, Absorb and Client now wish to modify certain service terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Amendment.** The Agreement covered by this Amendment is amended as follows:

a. **Amendment 2:** Paragraph 9.5 is added as follows:

The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. Absorb shall comply with applicable portions of Florida's Public Records Law.

CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

Absorb, if properly considered a "Contractor" as defined at Section 119.0701(a), agrees to comply with public records laws, specifically to:

1. Keep and maintain public records required by the City to perform the service;
2. Upon request from the Client's custodian of public records, provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Client.
4. Upon completion of the contract, transfer, at no cost, to the Client all public records in possession of the Contractor or keep and maintain public records required by the Client to perform the service. If the Contractor transfers all public records to the Client upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure



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requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of the Client.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871 5157
prc@cityofpsl.com**

- b. **Amendment 3:** Section 11.1.2 is amended by adding the following to the end of the Section:

The foregoing provisions of Section 11.1.2(i) or (ii) shall not be applicable to the extent that any Claim relates to or arises from Absorb's use of Client Data or Client Content in violation of this Agreement.

Amendment 5: A new Subsection 12.2.1 shall be added as follows: **12.2.1 Data Breach Claim.** Absorb's maximum aggregate liability relating to or arising out of Absorb's breach of its data protection obligations as set forth in this Agreement shall be limited to one million dollars (\$1,000,000 USD) (the "Data Breach Indemnity Cap").

- c. **Amendment 6:** Section 13.3 is deleted in its entirety and replaced with the following:

Governing Law and Jurisdiction. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida. In the event it is necessary for either Party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court.

- d. **Amendment 7:** Section 13.14 is added as follows:

Sovereign Immunity. Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the Client's sovereign immunity protections existing under the laws of the State of Florida or extending or increasing the limits of liability as set forth in Section 768.28 Florida Statutes.

- e. **Amendment 8:** Section 14 titled "Insurance" is added in its entirety:



Absorb shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as Client's review or acceptance of insurance maintained by Absorb are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Absorb under the Agreement.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

1. **Commercial General Liability Insurance:** Absorb shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$1,000,000
General aggregate	\$2,000,000
Errors and Omissions (Technology Errors & Omissions includes Cyber Insurance)	\$5,000,000
Umbrella CGL	\$9,000,000

2. **Additional Insured:** An Additional Insured endorsement must be attached to the certificate of insurance (should be CG2026) under the Commercial General Liability policy. Coverage shall apply as primary and non-contributory. A waiver of subrogation shall be provided in favor of the Client. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Commercial General Liability policy shall clearly state that coverage required by the Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability policy. The name for the Additional Insured endorsement issued by the insurer shall read "City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents and shall include Contract



#XXXXXXX – XXXXXXXXXXXXXXXX Project shall be listed as additionally insured.”. The Policies shall be specifically endorsed to provide thirty (30) day written notice to the Client prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the Client is amended during the term of this Agreement to exceed the above limits, Absorb shall be required, upon thirty (30) days written notice by the Client, to provide coverage at least equal to the amended statutory limit of liability to the City. Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance.

Policies shall be endorsed to include the City of Port St. Lucie added to its Commercial GL and Cyber Liability Policies.

3. **Cyber Liability Insurance:** Absorb shall agree to maintain Cyber Liability in limits not less \$1,000,000 Per Occurrence. Coverage to include coverage for:
- Technology Professional Liability
 - Data Breach Liability
 - Media Liability
 - Privacy and Regulatory Proceedings, Fines and Penalties
 - Privacy Breach Expenses
 - Public Relations Expenses
 - Network Extortion
 - Network Business Interruption
 - Network Asset Damage

Waiver of Subrogation: Absorb shall agree by entering into this Agreement to a Waiver of Subrogation for CGL policy.

5. **Deductibles:** All deductible amounts shall be paid for and be the responsibility of Absorb for any and all claims under this Agreement.

Absorb warrants that at time of signing of this Agreement, it does not use any contractors for account management or support. In the event that Absorb uses independent contractors at any point during the Service Term to provide account management or support to Client, Absorb shall remain fully responsible and accountable for any and all actions and omissions of its independent contractors as if the actions or omissions were committed by Absorb.

Absorb may satisfy the minimum limits required above for Commercial General Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability.

Client, by and through its Risk Management Department, reserves the right, but not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better.

The City, by and through its Risk Management Department, reserves the right, but not obligation, to review any required policies of insurance including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of Absorb to execute the Agreement and/or punctually deliver the required insurance, and other documentation may be cause for annulment of the Agreement.

2. **Integration with Agreement.** This Amendment modifies the Agreement. All provisions of the Agreement not specifically modified herein remain unmodified and apply to this Amendment. This Amendment controls if there is any conflict between this Amendment and the Agreement. All capitalized terms not defined herein have the definition assigned to them in the Agreement.
3. **Ratification.** The parties ratify and confirm all unmodified provisions of the Agreement.
4. **Execution.** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which constitute one and the same agreement. This Amendment may be executed and delivered electronically or by DocuSign services.
5. **Governing Law and Jurisdiction.** This Amendment shall be interpreted and enforced in accordance with the laws and subject to the jurisdiction as set forth in the Agreement.
6. **Waiver.** A party's failure to enforce a provision of the Amendment will not waive the party's right to enforce the same provision later or the party's right to enforce any other provision of the Assignment. To be effective, all waivers must be both in writing and signed by the party benefiting from the waived provision.
7. **Modification.** Revisions to this Amendment must be made in writing and signed by the parties.

Signatures on following page.

Absorb Software Inc.
#2500 – 685 Centre St. S,
Calgary, Alberta,
Canada T2G 1S5



IN WITNESS WHEREOF, the parties have caused this Assignment to be executed by their duly authorized officers as of the date first above written.

City of Port St. Lucie, Florida

Absorb Software, Inc.



Per: [Signature]

Per: _____

Name: Jesus Marezgo

Name: _____

Title: City Manager

Title: _____

Date: 4/3/2023

Date: _____



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