(APPENDIX H TO THE PURCHASING POLICY AND PROCEDURES MANUAL)
CITY OF NORTH RICHLAND HILLS
COOPERATIVE PURCHASE CUSTOMER AGREEMENT

This **Cooperative Purchase Customer Agreement** (**"Customer Agreement"**) is entered into by and between **Software One, Inc.** (**"Vendor"**) and the **City of North Richland Hills,** (**"Customer"** or **"Authorized Customer"**), a Texas government entity, and a Customer authorized to purchase goods or services pursuant to the Agreement between the **Department of Information Resources (DIR)** ("Cooperative Entity") and Vendor, Contract No. **DIR-TSO-4061**, as amended, (the "Agreement") with an expiration date of **November 21, 2023** . This Customer Agreement includes and shall be governed by (i) the terms and conditions of the Agreement, which are incorporated herein by reference and available online at **https://dir.texas.gov/contracts/dir-tso-4061** or upon request from Vendor, (iii) the attached Vendor Quote/Purchase Order No. **US-QUO-1036933** , if applicable, and (iii) the Government Contract and Purchasing Rider for Contracts with the City of North Richland Hills Contracts, if applicable, all of which are attached hereto and/or incorporated herein by reference. Authorized Customer is eligible and desires to purchase **Microsoft products and related services** pursuant to the terms and conditions of the Agreement as the Cooperative Entity may specify from time to time, as well as the terms and conditions of this Customer Agreement. To ensure goods and services are provided directly to the Customer, the Cooperative Entity will only be responsible for services provided to the Cooperative Entity will not be responsible for payments for services provided to the Customer.

The Authorized Customer agrees to the terms and conditions of the Agreement as applicable and as authorized by law. The Authorized Customer hereby agrees that it is separately and solely liable for all obligations and payments for equipment, products and services provided hereunder. Vendor agrees that Customer shall be entitled to the same rights and protections under the law afforded to the Cooperative Entity under the Agreement, as applicable, as if Customer had entered into the Agreement. Except in the event of gross negligence or intentional misconduct, neither party's liability shall exceed the amount paid by Customer under this Customer Agreement for the proceeding twelve (12) month period. Vendor agrees that until the expiration of three (3) years after final payment under this Customer Agreement, or the final conclusion of any audit commenced during the said three years, Customer, or Customer's designated representative, shall have access to and the right to audit at reasonable times, all records, hard copy or electronic, involving transactions relating to this Customer Agreement necessary to determine compliance herewith, at the Customer's sole cost and expense. Vendor agrees that the Customer shall have access to such records during normal business hours. Customer shall provide Vendor with reasonable advance notice of any intended audits.

Purchase Price - Payments under this Customer Agreement shall not exceed $ **300,000 annually** ("Purchase Price").

Term - The Term of this Customer Agreement ("Term") shall be for one of the following as selected below (Select the type of contract that applies):

☐ **Single Purchase Contract** –The Term shall not exceed one (1) year, and this Customer Agreement shall be for the purchase of goods or services as specified and quoted by the Vendor, and the Purchase Price shall not exceed the budgeted amount for Customer's current fiscal year for the applicable goods and services.

☐ **Supply / As Needed Contract** – The Term shall be effective as of _____ and shall expire on _____ at the end of FY___. This Customer Agreement shall be for multiple purchases of goods or services on an as needed basis, from the same vendor under the same contract, and shall not exceed the budgeted amount for Customer's current fiscal year for the applicable goods and services.

☒ **Multi-Year Contract** – The Term shall be for **3** year(s) expiring on **November 30, 2025**. This Customer Agreement may be renewed for **zero renewals**. Pursuant to DIR Contract DIR-TSO-4061, Appendix A, Section 4E, all applicable software license agreements, warranties or service agreements that are entered into between Vendor, and the City under the terms and conditions of the DIR Contract shall survive the expiration or termination of the DIR Contract. All Purchase Orders issued and accepted by Vendor, or other applicable Reseller pursuant to the DIR Contract, shall also survive expiration or termination of the DIR Contract for the term of the Purchase Order, unless the City terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall be issued for a term longer than five years from the effective date of the contract between Vendor, and the City. Customer Agreement shall be with a single vendor for products and services. If the amount of expenditures under this Multi-Year Contract equals or exceeds $50,000 in the aggregate, City Council approval is required. In the event the City does not appropriate sufficient funds to make payments during the current or any subsequent year, the City shall have the right to terminate this Multi-Year Contract at the end of any such fiscal year without penalty.

☐ **Emergency Purchase** – Purchases that are necessary to address a public calamity, because of unforeseen damage to property, or to protect the public health or safety where the City's ability to serve the public would be impaired if the purchase were not made immediately. Emergency purchases must meet the requirements of Local Government Code 252.022, and must be ratified by City Council if the purchase is $50,000 or more.

(Government Rider - Select if Vendor has additional terms and conditions that apply to this purchase)

☒ **Government Contract and Purchasing Rider for Contracts with the City of North Richland Hills, Texas** – If this purchase contains additional terms and conditions from the Vendor, other than those set forth in the Agreement, the Vendor shall separately execute the Government Contract and Purchasing Rider for Contracts with the City of North Richland Hills, Texas ("Government Rider"). Such applicable terms and conditions as set forth in the Government Rider shall supersede any conflicting terms of the Vendor's terms and conditions, and such Government Rider shall control. The Government Rider is attached hereto, incorporated herein by reference and made a part of this Customer Agreement for all purposes.

The undersigned represents and warrants that he/she has the power and authority to execute this Customer Agreement, bind the respective party, and that the execution and performance of this Customer Agreement has been duly authorized by the respective party. This Customer Agreement, and any amendment hereto, may be executed in counterparts, and electronically signed, scanned, digitally signed and sent via electronic mail and such signatures shall have the same effect as original manual signatures.

Each party has caused this Customer Agreement to be executed by its duly authorized representative on this **24th** day of **October** 20 **22** .

[Signature Page Follows]

NRH Cooperative Purchase Customer Agreement, Page 1 of 2
Vendor Name: Software One, Inc.

CA-CONTRACT NO. PUR0002_20220107

ACCEPTED AND AGREED:

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CITY OF NORTH RICHLAND HILLS:

APPROVED: I certify that funds are currently available for this purchase.

☐   **(Check the box if $3,000 or less)**

By: _____
Scott Kendall, Purchasing Manager

Department Director:

By: _____
Printed Name:
Department:

APPROVED:

By: _____ Date: _____
Mark Hindman, City Manager

Or Designee:

By: _____ Date: _____
Name:
Title:

ATTEST:

By: _____
Alicia Richardson, City Secretary/Chief
Governance Officer

By: _____
Traci Henderson, Assistant City Secretary

NRH City Council Action: Y ☐   N ☒

Date Approved:

Agenda Item No:

Ord/Res No.

APPROVED TO FORM AND LEGALITY:

By: _____
Maleshia B. McGinnis, City Attorney

By: _____
Thomas McMillian, Assistant City Attorney

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SOFTWARE ONE, INC.:

By: _____
Name:
Title:
Date:

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