

## NextRequest Order Form - Santa Rosa

Current Date: Aug 30, 2018 (valid for 60 days from Current Date)

5 Year Annually Paid Contract			
Customer	<b>Santa Rosa</b>	Term Start	<b>11/15/2018</b>
Address	<b>100 Santa Rosa Avenue, Santa Rosa, CA</b>	Term End	<b>11/15/2023</b>
Contact	<b>Sandi Bliss</b>	Invoicing	<b>Invoiced Annually</b>

**During the service term the price for the current service provided will be capped at an inflation based increase (3.5%) year over year.**

Name	Price	QTY	Subtotal
<b>Annual NextRequest License</b> <ul style="list-style-type: none"> <li>Record Request Management Module &amp; Document Module</li> <li>Unlimited users in specified agency or departments</li> <li>Software as a Service (SaaS); fully hosted, maintained, and cloud-based</li> <li>Support: Dedicated customer success staff; responses in ≤ 1 business day</li> </ul>	\$11,500.00	1	\$11,500.00
<b>Set Up (one time)</b> <ul style="list-style-type: none"> <li>Customer Success Plan + Application Configuration</li> <li>Two webinar training sessions (video recorded)</li> </ul>	\$2,500.00	1	\$2,500.00
<b>Redaction Module (yearly)</b> Unlimited users	\$1,500.00	1	\$1,500.00
<b>Single Sign On Maintenance (yearly)</b> Integration to Active Directory or OAuth to allow employees to sign-in with a single password. Maintenance for initial endpoint. One end point. User authentication only.	\$1,500.00	1	\$1,500.00
<b>Single Sign On Set Up (one time)</b> Initial technical setup and coordination with agency IT for Single Sign On (Active Directory or OAuth). User authentication only.	\$2,500.00	1	\$2,500.00
Subtotal			<b>\$19,500.00</b>
Total			<b>\$19,500.00</b>



### Service Agreement

Welcome to NextRequest! Thanks for using our platform. This Service Agreement ("Agreement") is entered between NextRequest Co., with a place of business at 433 Bryant St, San Francisco, CA 94107 USA ("NextRequest"), and the Customer listed above ("Customer"), as of the Effective Date. This Agreement includes the above subscription and support (the "Services") and incorporates the above Order Form as well as the Terms and Conditions and Service Level Agreement (referenced as attachment: "NextRequest Terms and Conditions") and which contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

#### Santa Rosa

Signature:

Name & Title:

GLORIA HURTADO, DEPUTY CITY MANAGER

Date:

11/28/18

Angela Caragrande, Asst

#### NextRequest Co.

Signature:

Name & Title:

Tamara Manik-Perlman, CEO

Date:

11/8/18

#### Accounts Payable Information

Name:

Daisy Gomez  
(City Clerk  
Office)

Email:

100 Santa Rosa Ave, Rm. 10  
Santa Rosa, CA 95404

Phone:

**NextRequest  
Terms and Conditions  
Version 3.0 (July 2018)**

These Terms and Conditions, together with the order form ("Order Form") executed between NextRequest Co. and Customer, which is incorporated herein by reference, constitute a legally binding contract between NextRequest and Customer. The Order Form, together with these Terms and Conditions is referred to as the "Agreement" or "Service Agreement". Any terms on Customer's purchase order or other business forms by which Customer orders or pays for Service will not become part of this Agreement.

NextRequest means NextRequest Co., a Delaware Corporation with principal offices at 433 Bryant Street, San Francisco, CA 94107 and Customer means the City of Santa Rosa, a municipality with principal offices at 100 Santa Rosa Avenue, Santa Rosa, CA. Each of NextRequest and Customer may each be referred to as a "Party" and together as the "Parties".

**Terms and Conditions**

**1. Services**

- 1.1. **NextRequest Service.** During the term of this agreement, NextRequest will use commercially reasonable efforts to deploy, host, and maintain for Customer an instance of the Service as further described in the Order Form.
- 1.2. **Service Level Agreement.** NextRequest will provide support for the Service according to the terms of the Service Level Agreement attached hereto as Exhibit A and incorporated by reference.
- 1.3. **Other Services.** If provided in the Order Form, NextRequest will provide Additional Services consistent with industry standards and according to the terms in the Order Form. Services such as setup or customer support will be provided during Business Hours, online, or by telephone, unless otherwise agreed to by the Parties.
- 1.4. **Excluded Services.** Unless expressly provided in the Order Form, NextRequest is not responsible for registering or maintaining domain names or DNS; hardware or software not provided as part of the Service; integration between the Service and any other software or system (except for issues originating with the Service or its interfaces); or direct support to Requesters.
- 1.5. **Security.** The Service is hosted by third-party Service Providers pursuant to agreements between NextRequest and such Service Providers. NextRequest maintains the level of security outlined in NextRequest's Systems Security Plan ("Security Plan"), which is available at: <https://www.nextrequest.com/compliance/system-security-plan>

**2. Intellectual Property and Licenses.**

- 2.1. **Service.** The Service is protected by copyright, trademark, trade secret, and other intellectual property laws of both the United States and foreign countries. Except for the express licenses granted in this Section 2.1, NextRequest reserves all rights in the Service. As between Customer and NextRequest, NextRequest retains all and exclusive rights, title, and interest in and to the Service, including all Intellectual Property in the Service and any software used to provide the Service to Customer. During the Term and conditioned upon Customer's compliance with all provisions of this Agreement, NextRequest hereby authorizes Customer to access and use the Service for purpose of

accepting, responding to and managing public records requests and publishing responsive documents ("**Purpose**"), and grants to Customer a personal, limited, royalty-free, non-exclusive, non-assignable, non-sublicensable and non-transferable right and license to use the Service only for the Purpose. Customer and Customer's Users shall not (a) copy, modify, translate or create derivative works or improvements of the Service; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Service or any part or derivative thereof to any person; (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code, underlying ideas, algorithms, structure or organization of the Service, in whole or in part; or (d) defeat, bypass, breach, deactivate, or otherwise circumvent any security device or protection used by the Service or access or use the Service other than through the use of its own then valid access credentials.

- 2.2. **Third-Party Software.** Open source software licenses for components of the Service released under an open source license constitute separate written agreements. To the limited extent that the open source software licenses expressly supersede this Agreement, the open source licenses govern Customer's agreement with NextRequest for the use of the components of the Service released under an open source license. For the avoidance of doubt, the owners of the open source licenses do not have access to Customer Content or Requester Content.
- 2.3. **Customer Content.** As between Customer and NextRequest, Customer retains ownership of all Intellectual Property in Customer Content. Customer grants to NextRequest, its Service Providers and each of NextRequest's respective subsidiaries, affiliates, and successors a worldwide, non-exclusive, royalty-free, fully-paid, transferable, irrevocable, perpetual, unlimited, and sub-licensable right to use, host, store, cache, reproduce, publish, publicly display, perform, distribute, transmit, translate, publicly perform, adapt, and modify Customer Content, in all media now known or later developed, for the purpose of providing, maintaining, operating, or improving the Service. NextRequest and its Service Providers may access or use Customer Content as necessary to maintain or provide the Service, comply with the law or an order of a governmental body, as permitted under Section 6
- 2.4. **Requester Content.** Nextrequest and/or Requesters retain ownership of all Intellectual Property in Requester Content. NextRequest grants to Customer a worldwide, non-exclusive, royalty-free, fully-paid, non-transferrable, irrevocable, perpetual, and non- sublicensable right to use Requester Content for the Purpose.
- 2.5. **Usage Data.** NextRequest retains ownership of all Intellectual Property in Usage Data, and Customer hereby unconditionally and irrevocably grants to NextRequest an assignment of all right, title and interest in and to the Usage Data, including all Intellectual Property rights relating thereto. NextRequest grants to Customer a worldwide, non-exclusive, royalty-free, fully-paid, non-transferrable, irrevocable, perpetual, and non- sublicensable right to use Usage Data for the Purpose.
- 2.6. **Transfer of Content.** Customer Content may be disclosed and otherwise transferred to an acquirer, or successor or assignee as part of any merger, acquisition, debt financing, sale of company assets, or similar transaction, as well as in the event of an insolvency, bankruptcy, or receivership in which such data is transferred to one or more third parties as a NextRequest business asset.
- 2.7. **Feedback and improvements.** Any suggestions provided by Customer to NextRequest with respect to NextRequest's products or services shall be collectively deemed "Feedback." NextRequest will be free to use Feedback without any obligation to

Customer and Customer hereby assigns to NextRequest all rights, title, and interest in and to any Feedback. NextRequest will be considered the sole author of all modifications or improvements to the Service. NextRequest may use Customer Content to improve the Service and shall be the sole owner of any such improvements, so long as such use protects the confidentiality of Customer Content.

### 3. **Customer Obligations**

- 3.1. **Payment.** Customer will make all payments required under Section 5.
- 3.2. **Security.** Customer will protect the accounts, passwords, and other authentication information Customer uses to access the Service and any NextRequest system, and will be responsible for any activity attributable to a Customer account or Customer Users. Customer's user names, passwords, other login information or personal information may be stored by NextRequest or its Service Providers in the course of providing Service and may be available to the NextRequest application and Service Providers.
- 3.3. **Data Backup.** Customer will maintain backups of all Customer Content stored in the Service in an environment separate from the Service.
- 3.4. **Laws Applicable to Customer.** Customer is solely responsible for Customer Content and will comply with all laws applicable to Customer's use of the Service, including without limitation privacy and security laws and laws regarding the export of data or software. NextRequest shall not be liable for any damages that arise due to Customer or Customer Users' publication, processing, storage or transmission of any information in violation of any law. Customer represents and warrants that it has reviewed the Security Plan carefully and has made its own, independent determination whether the levels of privacy and security set forth in the Security Plan are sufficient for Customer's use of the Service. Customer acknowledges and agrees that the Service, including without limitation the degree of privacy and security provided by the Service, may not comply with special privacy and security requirements relating to the processing, storage or transmission of Sensitive Information. Customer will not use the Service to process any information subject to the Health Insurance Portability and Accountability Act ("HIPAA"). Customer agrees that if Customer uses the Service to process Sensitive Information, any such use is at Customer's own risk and NextRequest will have no liability to Customer or any third party arising out of or relating to such use. Customer will indemnify NextRequest and its Service Providers against any and all damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to such use. Customer will not disclose to NextRequest or any third party any information that Customer is prohibited by any law or regulation from disclosing. To the extent that Customer Content causes NextRequest or its Service Providers to be subject to any law to which it otherwise would not be subject (such as HIPAA), NextRequest or its Service Providers may remove such data pursuant to Section 8 or discontinue the Service without any liability except to refund any fees Customer paid to NextRequest attributable to unused services.
- 3.5. **Public Records Laws.** Customer is solely responsible for compliance with all applicable public record laws and under no circumstances shall NextRequest be liable for any damages relating to non-compliance, regardless of whether such non-compliance arises out of or relates to Customer's use of or reliance on the Service. Customer warrants that Customer is solely responsible for all Customer Content and use of Customer Content by Requesters. Neither NextRequest nor its Service Providers guarantees the accuracy, integrity or quality of Customer Content.



- 3.6. **Acceptable Use Policy.** Customer and Customer Users shall not use the Service (i) to send or facilitate the sending of unsolicited bulk commercial email (spam) or inundating a target with communications requests so the target cannot effectively respond to legitimate traffic; (ii) to send, upload, distribute, or transmit or store Prohibited Content (iii) to distribute malware, including viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature; (iv) to alter, disable, interfere with, disrupt, circumvent or exploit vulnerabilities in any aspect of the Service or NextRequest's or third parties' other services or systems; (v) monitor data or traffic on the Service without permission; (vi) forge TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route; (vii) to infringe or misappropriate the Intellectual Property or privacy rights of any person; (viii) to otherwise violate, or promote the violation of, any law or the legal rights of any person; (ix) to impersonate another person; (x) for any high risk use where failure of the Service could lead to death or serious bodily injury or any person or to physical or environmental damages, such as applications controlling transportation, medical systems or weaponry systems; or (xi) to otherwise access or use the Service beyond the scope of the authorization granted under Section 2.1. If Customer becomes aware of any actual or threatened activity prohibited under this section, Customer shall immediately take all reasonable measures to stop the activity, to mitigate its effects, and to notify NextRequest. Customer is responsible for any act or omission of any Customer User. NextRequest and its Service Providers may report any activity, including disclosing appropriate information, if they suspect such activity violates any law or regulation.
- 3.7. **Service Policies and Privacy.** Customer acknowledges and agrees that Requesters must agree to the NextRequest Terms of Service available at <https://www.nextrequest.com/termsofservice> which may be updated from time to time. Customer agrees to the NextRequest privacy policy available at <https://www.nextrequest.com/privacypolicy>, which applies to information collected with respect to Requesters and with respect to the Agency and Agency personnel using the Service, including Requester Content, Usage Data and email correspondence handled by the Service. The NextRequest privacy policy applies to Usage Data, but does not apply to Customer Content itself.
- 3.8. **Deletion of Customer Content.** The Service enables Customer to delete Customer Content for purposes of adhering to Customer's document retention or other policies. When Customer deletes Customer Content ("**Deleted Content**"), relevant documents are removed from databases accessible to Customer and/or the general public so that Customer no longer has access to Deleted Content. However, copies and backups of Deleted Content may continue to be stored on NextRequest's or its Service Providers' servers. Customer acknowledges and agrees that after deletion, under no circumstances will NextRequest provide Customer with copies of Deleted Content. NextRequest may provide Deleted Content to third parties as required by law or a court order.
4. **Customer Representations and Warranties.** Customer represents and warrants and undertakes that it has all necessary rights in the Customer Content to permit Customer's use of the Service and to grant the licenses contained in this Agreement without infringing the Intellectual Property or other rights of any third parties, violating any applicable laws, or violating the terms of any license or agreement to which it is bound. Customer represents

and warrants that it has full power and authority to enter into this Agreement and that it is binding upon and enforceable in accordance with its terms.

**5. Fees and Invoicing.**

**5.1. Fees, Invoicing.** Customer will pay all fees stated in the Order Form within 30 days of receiving an invoice from NextRequest.

**5.2. Expenses.** If Customer purchases Hourly Services, Customer will reimburse NextRequest for all ordinary and necessary expenses incurred in connection with the performance of the Hourly Services, including travel-related expenses. All travel will be pre-approved by Customer.

**5.3. Taxes.** Customer is responsible for any taxes that may be due as a result of this Agreement, except for taxes on NextRequest's net income. Taxes payable by Customer will be billed as separate items on NextRequest's invoices and will not be included in NextRequest's fees. If Customer claims a tax exemption, Customer must provide documentation of the exemption to NextRequest at the time of Customer order.

**6. Confidential Information**

**6.1. Duty to Protect Confidential Information.** Each Party will exercise the same degree of care and protection with respect to the Confidential Information of the other Party that it exercises with respect to its own Confidential Information, at least a reasonable degree of care. A Party will not use the Confidential Information of the other Party except as permitted by this Agreement. Notwithstanding the foregoing (i) either Party may disclose the other's Confidential Information to its employees and agents who have a need to know, provided that any agent to which Confidential Information is disclosed is bound by non-disclosure terms at least as protective as those in this Section 6; (ii) either Party may disclose Confidential Information, including personal data that is Customer Content, Requester Content or Usage Data, if so required by law (including court order or subpoena) or in response to lawful requests by public authorities; and (iii) Usage Data relating to Customer's Content that is also Confidential Information is subject to NextRequest's Privacy Policy.

**6.2. Return of Confidential Information.** Unless otherwise authorized, upon the earlier of termination of this Agreement or request by the other Party, each Party will promptly return or, subject to Section 3.8, destroy all Confidential Information disclosed to it by the other Party and provide certification that all such Confidential Information has been returned or destroyed.

**6.3. Notification Obligation.** If a Party becomes aware of any unauthorized use or disclosure of the Confidential Information of the other Party, it will make commercially reasonable efforts to notify the other Party of the unauthorized use or disclosure and assist in seeking a protective order or other appropriate remedy.

**7. Term and Termination**

**7.1. Term.** The term of this agreement begins on the earlier of (1) acceptance of these Terms and Conditions by Customer or (2) the first date on which NextRequest begins providing Services to Customer and ends on the later of (a) the last day of the Initial Term as set forth in the Order Form, (b) the last date of any renewal term, or (c) the last date on which NextRequest provides Services to Customer. Unless NextRequest receives notice of termination from Customer 60 days or more before the expiration of the initial term (or any renewal term), the Agreement will renew automatically on the terms set forth herein for an additional term of one year at NextRequest's then-current rates.

- 7.2. **Termination for Convenience.** Customer may terminate for convenience at any time upon 30 days' written notice to NextRequest but will not be entitled to any refund of fees for any unused portion of the Service or unused Hourly Services.
- 7.3. **Termination for Breach.** Either Party may terminate the Agreement for breach if the other Party materially fails to meet any obligation stated in the Agreement and does not remedy that failure within thirty (30) days of written notice from the nonbreaching Party describing the failure.
- 7.4. **Termination in Insolvency.** Either Party may terminate the Agreement with immediate effect on written notice if the other is subject to an "Insolvency Event," meaning that it (i) is unable to pay its debts; or (ii) enters into compulsory or voluntary liquidation; or (iii) compounds with or contravenes a meeting of its creditors; or (iv) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or (v) ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts. Notwithstanding anything to the contrary within the Agreement, any fees that Customer owes to NextRequest for the Service will become due immediately upon the occurrence of an Insolvency Event.
- 7.5. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, all licenses and rights to use the Service granted to Customer shall terminate immediately and Customer shall immediately cease all use of the Service. If Customer has paid in advance for Service, and this Agreement terminates due to material breach of this Agreement by NextRequest, NextRequest shall refund Customer a prorated amount of any amount already paid. Upon termination by Customer for convenience or due to material breach by Customer, in addition to any remedy provided in this Agreement or provided in law or equity, NextRequest shall be entitled to retain any amounts already paid. The following terms will survive expiration or termination of the Agreement: Sections 2.3-2.7, 4, 5, 6, 10, 11 and 12 as well as all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement.
8. **Removal of Customer Content, Suspension of Service**
- 8.1. NextRequest and its Service Providers reserve the right to remove or prohibit any Customer Content or Requester Content. NextRequest may suspend or terminate Customer's use of the Service without liability if NextRequest or a Service Provider reasonably believes that: (a) it is required to do so by law or a regulatory or government body, or doing so is necessary to protect the rights of NextRequest, its Service Providers, or its other customers; (b) Customer or any Customer User has failed to comply with any material term of this Agreement, including the Acceptable Use Policy; (c) Customer's or any Customer User's use violates applicable law or third-party rights; (d) Customer Content causes NextRequest to be subject to any law to which it otherwise would not be subject (for example, HIPAA) ; or (e) this Agreement expires or is terminated. Notwithstanding the foregoing and for the avoidance of doubt, NextRequest and its Service Providers have no obligation to monitor, filter, or disable access to any Customer Content or Requester Content.
- 8.2. If NextRequest or a Service Provider elects to remove Customer Content or suspend the Service, to the extent possible. NextRequest will give Customer advance notice of at least one (1) Business Day.
- 8.3. If Customer Content is removed as part of the notice-and-takedown procedure provided by the Digital Millennium Copyright Act ("DMCA"), and Customer believes such Customer Content was wrongly removed as a result of a copyright infringement



notice, Customer may notify NextRequest as provided in section 6.3 of the Terms of Service.

9. **Changes to Services.** NextRequest may change, update or discontinue any or all of the Service at any time. NextRequest will make commercially reasonable efforts to timely notify Customer of discontinuation of the Service.

10. **Intellectual Property Infringement and Indemnification**

- 10.1. **NextRequest's Obligations for IP Infringement.** If any action is instituted by a third party against Customer based upon a claim that any part of the Service (an "Infringing Item"), infringes a United States patent, copyright or trademark, NextRequest's sole obligation will be at its option and expense to (a) procure for Customer the right to continue using the Infringing Item, (b) replace or modify the Infringing Item so that it is no longer infringing but continues to provide comparable functionality, or (c) terminate this Agreement and Customer's access to the Service, in which case NextRequest shall refund a prorated amount of any amounts paid for which Service have not yet been received. NextRequest shall have no liability to Customer for any infringement action to the extent such action arises out of a breach of the terms and conditions of this Agreement by Customer or of the use of the Service (or any component part thereof) after it has been modified by Customer without NextRequest's prior written consent. This Section 10.1 states NextRequest's sole liability to, and Customer's exclusive remedy against, NextRequest for infringement claims.

- 10.2. **Indemnification**

- a. Subject to the limitations of liability set forth in Section 11.3, NextRequest shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless Customer, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of NextRequest, its officers, employees, or agents, in said performance of services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of Customer.
    - b. The existence or acceptance by Customer of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of Customer's rights under this Section 10.2, nor shall the limits of such insurance limit the liability of NextRequest hereunder. The provisions of this Section 10.2 shall survive any expiration or termination of this Agreement.

11. **Disclaimers and Limitations on NextRequest's Liability**

- 11.1. NextRequest is not responsible to Customer or any third party for unauthorized access to Customer Content or the unauthorized use of the Service unless the unauthorized access or use results from NextRequest's or its Service Providers' failure to meet its security obligations under this Agreement. Customer is responsible for the use of the Service by any employee of Customer, any person Customer authorizes to use the Service, any person to whom Customer has given access to the Service, and any person who gains access to Customer Content or the Service as a result of Customer's failure to use reasonable security precautions, even if such use was not authorized by

Customer. Customer is not responsible for the use of the Service by Requesters, so long as such use would not otherwise be a violation of the foregoing sentence.

- 11.2. **Disclaimer of Warranty.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND NEXTREQUEST MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEXTREQUEST MAKES NO REPRESENTATION OR WARRANTY (A) USE OF THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, (B) THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR (C) REGARDING THE ACCURACY OR RELIABILITY OF ANY CONTENT.
- 11.3. **Limitation of Liability.** NEXTREQUEST AND CUSTOMER WILL NOT BE LIABLE FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF EITHER KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEXTREQUEST, CUSTOMER OR THEIR SUCCESSORS, LICENSORS, SERVICE PROVIDERS OR SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO NEXTREQUEST UNDER THIS AGREEMENT. TO THE EXTENT APPLICABLE LAW PROHIBITS THE FOREGOING LIMITATION OF LIABILITY, NEXTREQUEST'S AND CUSTOMER'S LIABILITY IS LIMITED TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW.
- 11.4. Nothing in this Agreement limits or excludes either Party's liability for any loss or damages resulting from death or personal injury caused by its negligence, or any fraud or fraudulent misrepresentation.

## 12. General

- 12.1. **Governing Law.** This Agreement will in all respects be governed by and construed and enforced in accordance with the laws of the State of California, without respect to conflict-of-laws principles.
- 12.2. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by binding arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association in San Francisco, California. Upon receipt of notice of any dispute to be settled by binding arbitration, the American Arbitration Association will use its best efforts to appoint a single arbitrator within 30 days after receipt of such notice.
- 12.3. **Arbitration Award.** The arbitrator will not have the authority to award exemplary or punitive damages to any injured party. A decision by the arbitrator will be final and binding. Judgment may be entered on the arbitrator's award in any court having jurisdiction, and such award will not be appealable.

- 12.4. **Notice.** Written notice by either Party to the other may be given: (i) in person, and such notice will be deemed valid on the date of delivery in person; or (ii) by email to the Party contact identified in the Order Form, and such notice will be deemed valid as of the proof of mailing date.
- 12.5. **Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety, without consent of the other Party, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns. NextRequest may use Service Providers to perform all or any part of the Service, but NextRequest remains responsible to Customer under this Agreement for Service performed by its Service Providers to the same extent as if NextRequest performed the Service itself.
- 12.6. **Force Majeure.** Neither Party will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond either Party's control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.
- 12.7. **Modifications.** Unless otherwise expressly permitted in this Agreement, the Agreement may be amended only by a formal written agreement signed by both Parties. An Order Form may be amended to modify, add, or remove services by mutual written agreement of the Parties, agreement by email being sufficient. Any terms on Customer's purchase order or other business forms by which Customer orders or pays for Service will not become part of this Agreement.
- 12.8. **Entire Agreement.** The Agreement, together with the Terms of Use and Privacy Policy, constitutes the complete and exclusive agreement between the Parties regarding the Service and supersedes and replaces any prior understanding or communication, written or oral. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of NextRequest which is not set out in the Agreement.
- 12.9. **Precedence.** If there is a conflict between the Order Form and this Agreement, then this Agreement will control.
- 12.10. **Unenforceable Provisions.** If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part will be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the Parties underlying the Agreement.
- 12.11. **No Waiver.** Each Party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past.
- 12.12. **No Partnership.** The relationship between the Parties is that of independent contractors and not business partners. Neither Party is the agent for the other, and neither Party has the right to bind the other to any agreement with a third party.
- 12.13. **No Third-party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

12.14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered a legal original for all purposes.

### 13. Insurance

- a. NextRequest shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by NextRequest in exchange for Customer's agreement to make the payments prescribed hereunder. Failure by NextRequest to (i) maintain or renew coverage, (ii) provide Customer notice of any material changes, modifications, or reductions in coverage that directly and adversely affect coverages required under Attachment One, or (iii) provide evidence of renewal, may be treated by Customer as a material breach of this Agreement by NextRequest, subject to section 7.3 of this Agreement. Notwithstanding the foregoing, any failure by NextRequest to maintain required insurance coverage shall not excuse or alleviate NextRequest from any of its other duties or obligations under this Agreement.
- b. NextRequest agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.
- c. NextRequest agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the named insureds.

### 14. Defined Terms

Capitalized terms used in this Agreement have the following meanings:

"Business Day" or "Business Hours" means 9:00 a.m. – 6:00 p.m. Monday through Friday, U.S. Pacific time, excluding public holidays in the United States.

"Confidential Information" means all information disclosed by one Party to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including information that is marked or otherwise conspicuously designated as confidential, and for NextRequest, scripts and other tools used in the Service. Information that is independently developed by either Party, without reference to the other's Confidential Information, or that becomes available to either Party other than through breach of the Agreement or applicable law, will not be "Confidential Information" of the other Party.

"Customer Content" means content (such as data, text, audio, video, or images) that Customer or Customer Users transfers to NextRequest for processing, storage or transmission in connection with Customer's use of the Service, as well as any results (such as redacted versions of documents) that Customer derives from the foregoing through its use of the Services. Customer Content does not include Usage Data collected from Customer, Customer Users, or Requesters.

"Customer User" means a person authorized by Customer, such as a Customer employee, to use the Service on Customer's behalf. Customer User does not include Requesters.



"Hourly Services" means hourly support or training services to be provided by NextRequest under an applicable Order Form.

"Intellectual Property" or "IP" means legally protectable rights related to patents, copyrights, trademarks, trade secrets, rights of publicity and any other proprietary intellectual property.

"Prohibited Content" means content (i) that violates any third party's rights, including privacy or Intellectual Property rights; (ii) that is libelous, harassing, abusive, fraudulent, defamatory, excessively profane, obscene, abusive, hate related, violent, harmful to minors; (iii) that advocates racial or ethnic intolerance; (iv) intended to advocate or advance computer hacking or cracking; (v) gambling; (vi) other illegal activity; (vii) drug paraphernalia; (viii) phishing; (ix) malicious content; and (x) other material, products or services that violate or encourage conduct that would violate any laws or third-party rights.

"Requester" means a person that uses the Service to make a public records request.

"Requester Content" means information provided by or collected from a Requester. Requester Content does not include Usage Data collected from Requesters.

"Sensitive Information" means information such as financial data, personal data, individually identifiable information about children, individually identifiable health information, geolocation information about specific people, Social Security numbers, driver's license numbers, other confidential ID numbers, financial account numbers, credit or debit card numbers, personal identification numbers (PINs) or passwords, street addresses, phone numbers or other personal information.

"Service" means NextRequest's integrated web-based service, which assists customers in responding to public records requests. The Service consists of a core web-based application and any optional modules which may be purchased by Customer. The details of the Service subject to this Agreement are set forth in the Order Form.

"Service Level Agreement" or "SLA" means the NextRequest Service Level Agreement attached as Exhibit A to this Agreement and incorporated by reference.

"Service Providers" means third-party providers of services that are part of the Service.

"Usage Data" means information other than Customer Content or Requester Content that is collected, directly or indirectly, from Customer, Customer Users, or Requesters by or through the Service, including information that incorporates or is derived from the processing, storage or transmission of information, data or content by or through the Service as well as any information, data or other content derived from NextRequest's or its Service Providers' monitoring of Customer's access to or use of the Service such as information reflecting the access or use of the Service by or on behalf of Customer, any Customer User, or any Requester.

## **NextRequest Service Level Agreement**

This Service Level Agreement ("SLA") defines the support obligations of NextRequest Co. ("NextRequest") to you, a purchaser of NextRequest's service. These terms are incorporated into and subject to the terms of the NextRequest Service Agreement. Capitalized terms not defined in this SLA shall have the meanings given to them in the NextRequest Service Agreement.

### **1. Service Guarantees**

**1.1 Availability.** NextRequest provides hosting for the NextRequest service through Heroku, Inc. ("Heroku" or "Hosting Partner"), which does not make guarantees about uptime. Based on past performance, NextRequest anticipates 99.9% uptime of the application, with the exception of planned outages for maintenance and upgrades for which NextRequest notifies the Customer 24 hours in advance ("Uptime"). If NextRequest fails to meet the Uptime, the Customer will be eligible for credits as described in section 3.2.

**1.2 Security.** NextRequest take the security of the Customer's data seriously and protects it according to the rigorous security practices described in our System Security Plan. Heroku, our Hosting Partner, utilizes certified data centers managed by Amazon, which implements industry-leading physical, technical, and operational security measures and has received ISO 27001 certification and Federal Information Security Management Act (FISMA) Moderate Authorization and Accreditation from the U.S. General Services Administration. If NextRequest becomes aware of any unauthorized access to its systems that poses any threat to the Service or the Customer's data, NextRequest will notify the Customer in writing of the issue no later than the close of the next business data after NextRequest learns of it.

**1.3 Data Integrity.** The PG Backups add-on for Heroku makes daily backups of Customers' systems and data. Seven (7) daily backups and five (5) weekly backups are retained.

**1.4 Location of Service.** Service and Customer's data is hosted in the U.S.

### **2. Service Request Process**

**2.1 Service Request Definition.** A Service Request is any email, phone call, or in-app chat ticket sent to NextRequest by the Customer indicating support action is necessary or desired. This includes Bug reporting and Customer Support.

**2.2 Severity Levels and Response Times.** Each Service Request will be assigned a Severity Level by the party initiating the request. If NextRequest reasonably determines that the Customer has assigned an incorrect Severity Level to a ticket, NextRequest may assign a different Severity Level. The Severity Levels are defined below, along with the corresponding Initial Response Time within which NextRequest (or, in the case of Critical requests, our Hosting Partner) will respond to the Customer's request and begin work on the issue:

Severity Level (Priority)	Definition	Initial Response Time and Channel
Critical Service is inoperative	Service is inoperative, Customer's business operations or productivity are severely impacted with no available workaround, a critical security issue exists.	2 hours ( <i>phone or email</i> )
Standard (High)	Service is operating but issue is causing significant disruption of Customer's business operations; workaround is unavailable or inadequate.	1 Business Day ( <i>phone or email</i> )
Standard (Medium)	Service is operating and issue's impact on the Customer's business operations is moderate to low; a workaround or alternative is available.	1 Business Day ( <i>email</i> )
Standard (Low)	Issue is a minor inconvenience and does not impact business operations in any significant way; little or no time sensitivity.	1 Business Day ( <i>email</i> )

## 2.3 Standard Service Requests

2.3.1 Initiating Standard Service Requests. The Customer may initiate a Standard Service Request by opening a ticket via the NextRequest in-app chat system. NextRequest support team members or systems may also create tickets on the Customer's behalf in response to issues identified by monitoring systems.

2.3.2 Response and Resolution. Once NextRequest has responded to a Service Request, NextRequest will work during Business Hours with the Customer's representatives and, as needed, our Hosting Partner to resolve the problem or provide a workaround. NextRequest makes no guarantee regarding the time to resolve a Service Request, only that NextRequest will use the reasonable efforts described above.

## 2.4 Critical Service Requests

2.4.1 Initiating Critical Service Requests. The Customer may initiate a Critical Service Request by calling NextRequest directly at 833-698-7778. The Customer will be directed to leave contact information and a detailed description

2.4.2 NextRequest's Response. NextRequest's support staff will contact the Customer within 2 hours of receiving the Customer's report of a Critical Service Request and will work continuously until the issue is resolved or a workaround is available. NextRequest will provide

the Customer with regular updates until the issue is resolved and will coordinate with the Customer during Business Hours.

**2.5 Customer Responsibilities.** The Customer agrees to assist NextRequest as necessary to resolve Service Requests and to provide any information NextRequest reasonably requests, including information necessary to duplicate the issue. The Customer agrees to make available personnel capable of understanding and accurately communicating technical details necessary to enable NextRequest to review issues, and to assist NextRequest in diagnosing issues.

## **2.6 Bugs and Bug Reporting**

**2.6.1 Bug Definition.** A Bug is defined as any issue where the NextRequest application does not function as intended. It is at the sole discretion of NextRequest staff to determine if an issue is classified as a Bug. None of the Customer's Customer Support hours will be deducted for reporting Bugs. The Customer may submit a Service Request in order to report a Bug.

## **2.7 Customer Support**

**2.7.1 Customer Support Definition.** Staff time spent by NextRequest assisting the Customer or Customer's representatives after the Service Agreement has been signed is defined as Customer Support. This may include helping users with account creation, account log in, configuration, or understanding features. Customer Support hours exclude: bug reporting and related discussions and fixes; regularly scheduled check-ins with NextRequest staff as specified in the Order Form; and training sessions specified in the Order Form. The Customer may submit a Service Request in order to receive Customer Support.

**2.7.2 Premium Customer Support.** Customers have an initial amount of Premium Customer Support hours specified in their Order Form. These Customer Support hours will adhere to the Service Request response times outlined in Sect. 2. Additional "Premium Customer Support" may be purchased as needed.

**2.7.3 Regular Customer Support.** If a customer has exhausted their Premium Customer Support hours they will continue to receive Regular Customer Support. Customers receiving Regular Customer Support will receive the same level of support regarding Service Requests and response times outlined in Sect. 2 with the exception that customers with Premium Customer Support will take priority and have their issues addressed first.

## **3. Service Credits**

**3.1 Issuance.** If NextRequest fails to meet the response time stated above, the Customer will be entitled to a credit of 2 service hours for each hour during which the response time guarantee is not met, up to a total of 8 hours per incident. The Customer must request a credit in writing via a support ticket no later than 14 days following the occurrence of the event giving rise to the credit. Credits will be applied to invoices issued in the future.

**3.2 Sole Remedy.** The credits stated in this Agreement are the Customer's sole remedy in the event NextRequest fails to meet a guarantee for which credits are provided. If NextRequest fails to perform any obligation for which a credit is not provided, the Customer's sole remedy is to



have NextRequest perform or re-perform the obligation, as applicable. The maximum total credit for failure to meet any guarantee during any calendar month shall not exceed one twelfth of the annual recurring fee for the NextRequest Service.

3.3 Credits for Downtime. During the term of the contract, the application will be operational and available at least 99.9% of the time in any calendar month, with the exception of planned outages for maintenance and upgrades in which NextRequest notifies the Customer 24 hours in advance. If NextRequest does not meet the SLA, the Customer will be eligible to receive the service credits described below. In order to receive service credits, the Customer must request the credit in writing via a support ticket within 14 days from the time the Customer becomes eligible to receive a service credit.

Monthly Uptime Percentage	Days of Service added to the end of the service term at no charge to you
< 99.9% to >= 99.0%	3
< 99.0% to >= 95.0%	7
< 95.0 %	15

3.4 Extraordinary Events. The Customer is not entitled to a credit for downtime or outages resulting from denial-of-service attacks, hacking attempts, or any other circumstances that are not within our control.

3.5 No Credit in Breach. The Customer is not entitled to a credit if: (i) the Customer is in breach of the Agreement (including the Customer's payment obligations to NextRequest) at the time of the occurrence of the event giving rise to the credit, (ii) the event giving rise to the credit results from the Customer's prior breach of the Agreement, or (iii) to the extent our failure to meet an Initial Response Time guarantee results from the Customer's delay or failure to meet the requirements of Section 2.5 ("Customer Responsibilities") of this SLA.

# **ATTACHMENT ONE INSURANCE REQUIREMENTS FOR TECHNOLOGY AGREEMENTS**

- A. Insurance Policies:** Consultant shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

<b>Insurance</b>	<b>Minimum Coverage Limits</b>	<b>Additional Coverage Requirements</b>
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. <b>Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.</b>
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 2 million per claim \$ 2 million aggregate	Consultant shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for five (5) years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.
5. Cyber Liability	\$ 2 million per occurrence  \$ 2 million aggregate	Covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion

and network security. Such coverage is required if any products and/or services related to information technology (including hardware and/or software) are provided to City and for claims involving any professional services for which Consultant is engaged with City for such length of time as necessary to cover any and all claims.

**B. Endorsements:**

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.
2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
  - a. For any claims related to this project, Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Consultant's insurance and shall not contribute with it; and,
  - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

- C. Verification of Coverage and Certificates of Insurance:** Consultant shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

**D. Other Insurance Provisions:**

1. No policy required by this Agreement shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Consultant or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Consultant may be required to provide financial guarantees.

4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.