

PROFESSIONAL SERVICES AGREEMENT

Project: Call Transcription and Analytics

THIS AGREEMENT is made and entered into this ___ day of _____, 20 __, by and between the City of Roseville, a municipal corporation (“CITY”), and Yactraq Online Inc., a Canadian corporation (“CONSULTANT”); and

W I T N E S S E T H:

WHEREAS, CITY desires professional services consisting of transcription and analytics of calls for various municipal departments; and

WHEREAS, CONSULTANT has prepared a proposal in response to RFP #12-029 which describes the scope of work to be performed by CONSULTANT, the budget for the work, and the schedule for performance of the work; and

WHEREAS, CONSULTANT is qualified and experienced to provide such professional services.

NOW, THEREFORE, the parties agree as follows:

1. Term. The term of this Agreement shall commence upon execution and expire on October 31, 2024. The City Manager may, in his or her discretion, elect to extend the Agreement in one (1) year increments for up to an additional five (5) years by giving CONSULTANT thirty (30) days advance written notice of each optional one (1) year renewal. Such extensions shall be memorialized by a written amendment to this Agreement.

2. Services. CONSULTANT shall perform, at the direction of CITY, the scope of services as described in EXHIBIT “A,” attached hereto and incorporated herein by this reference.

3. Compensation. For its services provided hereunder, CONSULTANT shall be compensated on a time and expense basis in accordance with the budget estimate as described in EXHIBIT “B,” attached hereto and incorporated herein by this reference. Any proposed increase in the effective rates for future services must be preceded by at least a 90-day written notice to the contracting department. Total compensation shall not exceed seventy thousand dollars (\$70,000) for the initial term. Total compensation for optional renewal years of this Agreement shall not exceed seventy thousand dollars (\$70,000) per term. Total compensation for the initial term and all optional renewal years shall not exceed four hundred twenty thousand dollars (\$420,000). Adjustment to the total compensation per year shall require a written amendment to this Agreement, subject to approval by the City Council.

CONSULTANT shall submit one monthly invoice for its services. Such invoices shall be delineated by task, the person performing the services, and the hourly rate, which shall be stated in time increments of not greater than one tenth (1/10) hours. CITY shall pay invoices within thirty (30) days after receipt, if the services specified in the invoice have been satisfactorily completed.

4. Indemnification. To the fullest extent allowed by law, CONSULTANT shall defend, indemnify, and save and hold harmless CITY, its officers, agents, employees and volunteers from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the

public), or damage to property, resulting from or arising out of CONSULTANT's willful misconduct or negligent act or omission while engaged in the performance of obligations or exercise of rights created by this Agreement, except those matters arising from CITY's sole negligence or willful misconduct. The parties intend that this provision shall be broadly construed.

CONSULTANT agrees to defend and indemnify CITY if, despite the parties intent and practice, any venue, agency, or court with competent jurisdiction determines that CONSULTANT and/or any of its agents, officers, employees, volunteers, independent contractors, or subcontractors, are characterized as employee(s) of CITY.

CONSULTANT's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnity obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

5. Insurance. CONSULTANT agrees to continuously maintain, in full force and effect, the following minimum policies of insurance during the term of this Agreement.

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workers' Compensation	Statutory
Commercial General Liability	\$1,000,000 each occurrence \$2,000,000 aggregate Personal Injury: \$1,000,000 each occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit
Professional Liability (errors and omissions)	\$1,000,000 per claim \$2,000,000 aggregate

a. Form. CONSULTANT shall submit a certificate evidencing such coverage for the period covered by this Agreement in a form satisfactory to Risk Management and the City Attorney, prior to undertaking any work hereunder. Any insurance written on a claims made basis is subject to the approval of Risk Management and the City Attorney.

b. Additional Insureds. CONSULTANT shall also provide a separate endorsement form or section of the policy showing CITY, its officers, agents, employees and volunteers as additional insureds for each type of coverage, except for Workers' Compensation and Professional Liability. Such insurance shall specifically cover the contractual liability of CONSULTANT. The additional insured coverage under the CONSULTANT's policy shall be primary and noncontributory, as evidenced by a separate endorsement or section of the policy, and shall not seek contribution from CITY's insurance or self-insurance. In addition, the additional insured coverage shall be at least as broad as the Insurance Services Office ("ISO") CG 20 01 Endorsement. Any available insurance proceeds in excess of the specified minimum insurance coverage requirements and limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the full coverage and maximum limits of any insurance proceeds available to the named insureds, whichever is greater.

c. Cancellation/Modification. CONSULTANT shall provide ten (10) days written notice to CITY prior to cancellation or modification of any insurance required by this Agreement.

d. Umbrella/Excess Insurance. The limits of insurance required in this Agreement may be satisfied by a combination of primary and excess insurance. Any excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply

on a primary and noncontributory basis for the benefit of CITY (if agreed to in a written contract) before CITY's own insurance shall be called upon to protect it as a named insured.

e. Subcontractors. CONSULTANT agrees to include in its contracts with all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Furthermore, CONSULTANT shall require its subcontractors to agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSULTANT is bound to CITY under this Agreement. Additionally, CONSULTANT shall obligate its subcontractors to comply with these same provisions with respect to any tertiary subcontractor, regardless of tier. A copy of CITY's indemnity and insurance provisions will be furnished to the subcontractor or tertiary subcontractor upon request.

f. Self-Insured Retentions. All self-insured retentions ("SIR") must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or CITY. CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. The failure to exercise this right shall not constitute a waiver of such right.

g. Waiver of Subrogation. CONSULTANT hereby agrees to waive subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss under a Workers Compensation, Commercial General Liability or Automobile Liability policy. All Workers Compensation, Commercial General Liability and Automobile Liability policies shall be endorsed with a waiver of subrogation in favor of CITY,

its officers, agents, employees and volunteers for all work performed by CONSULTANT, its employees, agents and subcontractors.

h. Liability/Remedies. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT of liability in excess of such coverage, nor shall it preclude CITY from taking such other actions as are available to it under any other provisions of this Agreement or law.

6. Records. CONSULTANT and its subcontractors shall maintain all files and records relating to the services performed hereunder during the term of this Agreement and for a period of not less than one (1) year after the date of termination or expiration. Provided, however, that in the event of litigation or settlement of claims arising from the performance of this Agreement, CONSULTANT and its subcontractors shall maintain all files and records until such litigation, appeals or claims are resolved. Duly authorized representatives of CITY shall have right of access during normal business hours and after reasonable notice to CONSULTANT's and subcontractors' files and records relating to the services performed hereunder, and may review and copy the files and records at appropriate stages during performance of the services and during the one (1) year period following termination or expiration of this Agreement. CONSULTANT shall include this provisions in its contracts with all subcontractors.

7. Time is of the Essence. Time is of the essence of this Agreement.

8. Prevailing Wages. When applicable, for purposes of this Agreement, CONSULTANT and its subcontractors shall comply with all applicable prevailing wage laws, e.g., but not limited to, California Labor Code Sections 1770 et seq. In accordance with said Section 1775, CONSULTANT shall forfeit as a penalty to the City two hundred dollars (\$200)

for each calendar day or portion thereof for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any work done on-site under the Agreement by CONSULTANT or by any subcontractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage shall be paid to each worker by CONSULTANT or the applicable subcontractor.

Pursuant to the provisions of California Labor Code Section 1773, the contracting department has identified the source, stated below, of the general prevailing rate of wages applicable to the site to be done, for straight time, overtime, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. These wage rates may be obtained from the State Department of Industrial Relations and/or the following website address: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

Pursuant to Labor Code Section 1773.2, general prevailing wage rates set forth above, which forms a part of this Agreement, shall be posted by CONSULTANT at a prominent place at the work site. Prevailing wage rates to be posted at the work site will be furnished by the contracting department. The possibility of wage increases is one of the elements to be considered by CONSULTANT in determining its proposal, and will not under any circumstances be considered as the basis of a claim against CITY or the Agreement.

9. Compliance with Laws. CONSULTANT shall comply with all federal, state and local laws, ordinances and policies as may be applicable to the performance of services under this Agreement.

10. Ability to Perform. CONSULTANT agrees and represents that it has the time, ability and professional expertise to perform the services required under this Agreement.

11. Governing Agreement. In the event of any conflict between this Agreement and its EXHIBITS, the provisions of this Agreement shall govern. In the event of any conflict between any of the EXHIBITS, the provisions of the first in order of attachment shall govern.

12. Assignment. CONSULTANT is employed to perform unique personal services. CONSULTANT shall not assign this Agreement without the prior written consent of CITY. CONSULTANT shall not employ or otherwise incur any obligation to pay other specialists or experts for services in connection with this Agreement, without prior written consent of CITY.

13. Independent Contractor. CONSULTANT, inclusive of its agents, officers, employees, volunteers, independent contractors, and subcontractors, shall act as an independent contractor, and covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of CITY by reason of this Agreement.

CONSULTANT and CITY agree that: (a) CONSULTANT is free from the control and direction of CITY in connection with the performance of the work; (b) CONSULTANT is providing services directly to CITY; (c) CONSULTANT has and will maintain at all relevant times a business license; (d) CONSULTANT maintains a business location that is separate from CITY; (e) CONSULTANT is customarily engaged in an independently established business of the same nature as that involved in the work performed hereunder; (f) CONSULTANT actually

contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from CITY; (g) CONSULTANT advertises and holds itself out to the public as available to provide the same or similar services; (h) CONSULTANT provides its own tools, vehicles, and equipment to perform the services; (i) CONSULTANT has negotiated its own rates; (j) CONSULTANT set its own hours and location of work in accomplishing CITY's on-call needs; and (k) CONSULTANT has the right to control the manner and means of accomplishing the result desired and exercises its own expert independent judgement.

14. Representations and Warranties. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to terminate as void this Agreement, without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

15. Successors in Interest. This Agreement shall be binding upon the heirs, successors, executors, administrators and assigns of the respective parties hereto.

16. Copyright, Ownership and Use of Materials. All tangible material ("Material") created or delivered pursuant to this Agreement is considered a work made for hire under the Copyright Act. To the extent such Material does not qualify as a work made for hire, CONSULTANT hereby assigns to CITY all right, title, and interest, including but not limited to all copyrights, in all Material created by CONSULTANT in its performance under this

Agreement. Material constitutes the scope of work outlined in Exhibit A and attached hereto, and all written and other tangible expressions, including but not limited to, drawings (including computer aided drawings), papers, documents, reports, surveys, renderings, exhibits, sketches, maps, models, prints, paintings or photographs, in any and all media or formats in which such materials have been created or are maintained. All Material furnished by CONSULTANT is, and shall remain, the property of CITY.

CONSULTANT shall execute any documents necessary to effectuate such assignment. In the event that CONSULTANT uses, employs, designates, or retains any person or entity who is not an employee of CONSULTANT, to perform any work required of it pursuant to this Agreement, CONSULTANT shall require said person or entity to execute an agreement containing the preceding paragraph.

17. Termination of Agreement. The City may terminate this Agreement without cause by giving CONSULTANT ten (10) days advance written notice from the City Manager. CONSULTANT may terminate this Agreement without cause by giving CITY thirty (30) days advance written notice. In the event of termination through no fault of CONSULTANT, CITY shall compensate CONSULTANT for services performed as of the date of termination, upon the release to CITY of all Material hereunder, in any and all media or formats in which such materials have been created or are maintained. CITY retains the right to receive and use any MATERIAL, notwithstanding any termination or any dispute regarding the amount to be paid.

18. Attorney's Fees; Venue; Governing Law. If either party commences any legal action against the other party arising out of this Agreement or the performance hereof, the prevailing party in such action shall be entitled to recover its reasonable litigation expenses, including but not limited to, court costs, expert witness fees, discovery expenses, and attorney's

fees. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

19. Modification. This Agreement and each provision contained herein may be waived, amended, supplemented or eliminated only by mutual written agreement of the parties.

20. Severability. If any of the provisions contained in this Agreement are for any reason held invalid or unenforceable, such holding shall not affect the remaining provisions or the validity and enforceability of the Agreement as a whole.

21. Notices. Any notices to parties required by this Agreement shall be delivered personally or mailed, U.S. first class postage prepaid, addressed as follows:

CITY OF ROSEVILLE

Andrea Blomquist
Utility Billing Operations Mgr.
116 S. Grant Street, Ste. 100
Roseville, CA 95678

CONSULTANT

Jon Arnett,
SVP Global Sales
321 Water Street, Ste. 501
Vancouver, BC
V6B1B8 CANADA
Copy to: Jehangir Daruvala, Chairman

Either party may amend its address for notice by giving notice to the other party in writing.


22. Integrated Agreement. This is an integrated agreement and contains all of the terms, considerations, understanding and promises of the parties. It shall be read as a whole.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ___ day of _____, 20___, and CONSULTANT has caused this Agreement to be executed.


CITY OF ROSEVILLE, a
municipal corporation

YACTRAQ ONLINE INC., a Canadian
corporation

BY: _____
DOMINICK CASEY
City Manager


BY: Jehangir Y. Daruvala
its: Chairman of the Board

ATTEST:

and 
BY: Navaz Daruvala
its: Assistant Treasurer

BY: _____
CARMEN AVALOS
City Clerk

APPROVED AS TO FORM:

BY: _____
MICHELLE SHEIDENBERGER
City Attorney

APPROVED AS TO SUBSTANCE:

BY: 
Daniel Beans (Oct 18, 2023 14:47 PDT)
DANIEL BEANS
Electric Utility Director

EXHIBIT "A"



Yactraq Speech Analytics Pricing Proposal for THE CITY OF ROSEVILLE RFP: 12-029

Submitting to cityclerkroseville@roseville.ca.us

Yactraq HQ:

321 Water Street, Suite 501, Vancouver, BC, V6B1B8, Canada.

Contact Information

Name: Jon Arnett

Title: SVP, Global Sales

Email: jon@yactraq.com

Tel: 416-997-1839

Summary

Yactraq is offering the standard Omnitraq platform, to THE CITY OF ROSEVILLE for transcription and analytics of calls for various municipal departments.

Yactraq will perform the services and adhere to the requirements of the RFP as defined by the city of Roseville.

Languages:

The initial product will perform in English and Spanish. Additional languages to be added upon request, and discussion had whether or not the same pricing model is available for the languages; increases may be necessary for other languages.

Hosting:

Hosting will be assumed to be performed by the customer in their cloud solution of choice, or with an on-premise installation at The City of Roseville's.



Pricing & Product Features:

Yactraq Omnitraq

Features included:

- Key-phrase spotting (100 key phrases included)
- Agent performance evaluation
- Call categorization
- Call indexing
- Free-form database search with logic
- Word and number redaction
- Sentiment Analysis/360 Emotion detection
- Detailed Transcriptions
- Quality Automation

Software License Cost: \$14.40 USD per audio hour

Setup and Installation fees for on-premise installation (performed remotely): \$4,500.00 USD

Yactraq's proposed solution

Yactraq proposes the solution based on the requirements referenced above. The solution involves Yactraq's platform to automatically monitor all the calls for the predefined audit sheet sample as shared by the customer. This data will be made available to customer for assessment, coaching, Feedback, Training, and reporting.

Feature Descriptions:

Firm's qualifications:

Yactraq is a speech transcription company, and data analytics company with AI and machine learning capabilities. Yactraq was founded in 2010, and has launched enterprise grade software solutions to leading companies over the years. Yactraq will be providing all transcription and analytics services as defined in the RFP.

1. **Sentiment Analysis:** Yactraq uses word based and tonality algorithms to analyze overall customer sentiment.
- 1.1 **Customer Behavior:** By analyzing attributes like the keywords in the surveys, the solution can determine customer attitude, allowing Yactraq to analyze customer behavior and sentiment.
- 1.2 **Agent Monitoring:** Similarly, our software can monitor agent energy, attitude & atmosphere.
- 1.3 **Agent Performance:** By analyzing both the customer and agent audio and looking deeper into six additional variables like burnout, retention etc., Yactraq can further help assess an agent's performance and predict attrition rates.
2. **Discovery:** Many Yactraq customers have a defined set of semantic topics, entities, and custom taxonomies of categorized key phrases that they want to track. Increasingly these customers also want Yactraq software to help them discover what they are not yet aware of. Discovery can help invent new ways of selling, retaining existing customers and evaluating agent feedback.



3. Voice of the Customer

3.1 360 Consumer Insights:

Customer Feedback: Comprehensive view of customer feedback based on both the speech as well as voice tonality (prosody).

Consumer Need: Demand drivers can be quantified via key phrase frequency, correlation vs causation and other factors. Consumer response to special offers can also be similarly quantified.

4. **Omnichannel Capability:** Because Yactraq has both speech as well as text analysis capabilities we can provide an omnichannel dashboard containing not just phone call data but also chat logs, emails, social media and other channels.

5. Agent Evaluation

5.1 **Sales Closing:** Yactraq speech analytics measures how effectively salespeople use various types of negotiation and closing techniques. This is achieved via a specific taxonomy of categorized key phrases such as “book this”, “send you a quote” etc.

5.2 **Customer Retention Capability:** A rules-based capability that flags calls based on whether or not agents offer retention discounts at appropriate points, such as when a consumer is trying to cancel a monthly subscription service.

5.3 **Politeness & Formality:** Concierge style formal language is very important for certain industry verticals and Yactraq provides a capability to measure agent performance on these parameters.

6. Security & Compliance

6.1 **Brand / Script Adherence:** Yactraq has the ability to detect the degree of deviation from quasi-verbatim scripts. The option to determine acceptable levels of deviation is with the administrator of the customer. This feature provides script adherence on all the relevant calls to stay compliant.

6.2 **Compliance (PCI, SOC 2, GDPR):** Yactraq aggressively redacts sensitive numeric data like credit card numbers and social security numbers. For high security applications, the solution also selectively mutes sensitive sections of audio recordings. In order to not harm useful information, Yactraq selectively allows the usage of specific types of numeric data like dollar values.

6.3 **System of Record:** Emails are universally archived in case at some future point they are required to be presented to a government agency or a judge. In a world that is increasingly threatened by cyber security issues and where international corporate espionage is rampant, the use of speech analytics as a system of permanent record for phone calls provides senior management the assurance that such information will be available if ever needed by a government agency or a judge in the future.

7. **Rules Engine:** Yactraq provides a rules-based capability that allows clients to analyze call attributes based on a set of custom rules.

8. **Automated Call Scoring:** Yactraq provides configuration capabilities where customers can input automated call scoring criteria without depending on Yactraq professional services.

Benefits of the Speech Analytics

(Note efficiency increases are based on industry and direct customer averages, and subject to how clients implement and operate the software)

1 Improve Operational Efficiency by 87%

Automate manual tasks to save your team time and lower costs. Ramp up agents remotely with end-to-end coaching workflows. Implement a quality program to improve call resolution, dead



air and hold times. Roll out training programs to remote teams quickly. Equip your agents to hit the ground running while giving timely feedback and coaching to improve across every interaction. Cut costs and reorganize staffing priorities. Reduce overhead spending by 62% and use newly freed resources to open new roles and up-skill employees. Empower your team leads with a faster auditing process across every interaction. Help client-facing teams minimize manual work, efficiently align stakeholders, and focus on the big picture.

2 Improve CSAT and Customer Retention by boosting empathy scores by 32%

Surface opportunities to meet customer needs with 100% visibility into interactions. Identify unhappy customers with sentiment detection to resolve issues proactively. Drive agent behavioral change with data-driven coaching and feedback loops. Leverage contextual insights from 100% of your customer-agent interactions to understand where you exceed customer expectations, and where to improve. Conduct root cause analysis to understand call drivers. Leverage the power of Moments to discover ways to better meet customer needs and align with CX best practices.

3 Improve Revenue growth by 18%

Uncover what is keeping your sales reps from driving one-call closes and coach to increase conversion rates and new bookings at scale. Be the “eyes and ears” of your sales process and coach to increase one-call-closes. Improve adherence to talk tracks on discovery, pricing, and qualifying. Close performance gaps that are contributing to low quota attainment. Leverage intelligence from every B2C sales interaction to understand your sales process and catch opportunities to make improvements. Ensure sales rep adherence to best practices and make performance-improving adjustments through targeted and personalized coaching. Stack rank your sales reps to surface discrepancies in performance. Exceed quota attainment goals with targeted evaluations and coaching on qualifying, price-quoting and closing. Dive into individual activity to find reps in need of coaching with Agent Reports. Conduct root cause analysis to surface low performance drivers. Customize evaluation forms to track and monitor progress of performance goals. Export data to other enterprise and BI tools to show trends and improve. Analyze what consumers are calling in about most, and take action on opportunities to create new service offerings that meet the demand.

4 Improve Compliance and risk management by 40%

Reduce risk and stay compliant with a fully auditable trail of accurate, secure customer conversations. Mitigate risk with 100% compliance monitoring. Pinpoint moments where agents don't follow scripts. Redact sensitive information to protect customer data. Set guardrails against compliance issues by tailoring your forms and feedback to cover regulatory considerations. Uncover compliance breaches, ensure your teams adhere to scripts, and enforce mentioning of disclosures. Uncover every instance where agents don't follow scripts and key disclosures with an AI engine that analyzes conversations with actionable and trustworthy recommendations. Leverage automated redaction to selectively hide sensitive customer information without losing the context of the conversation.

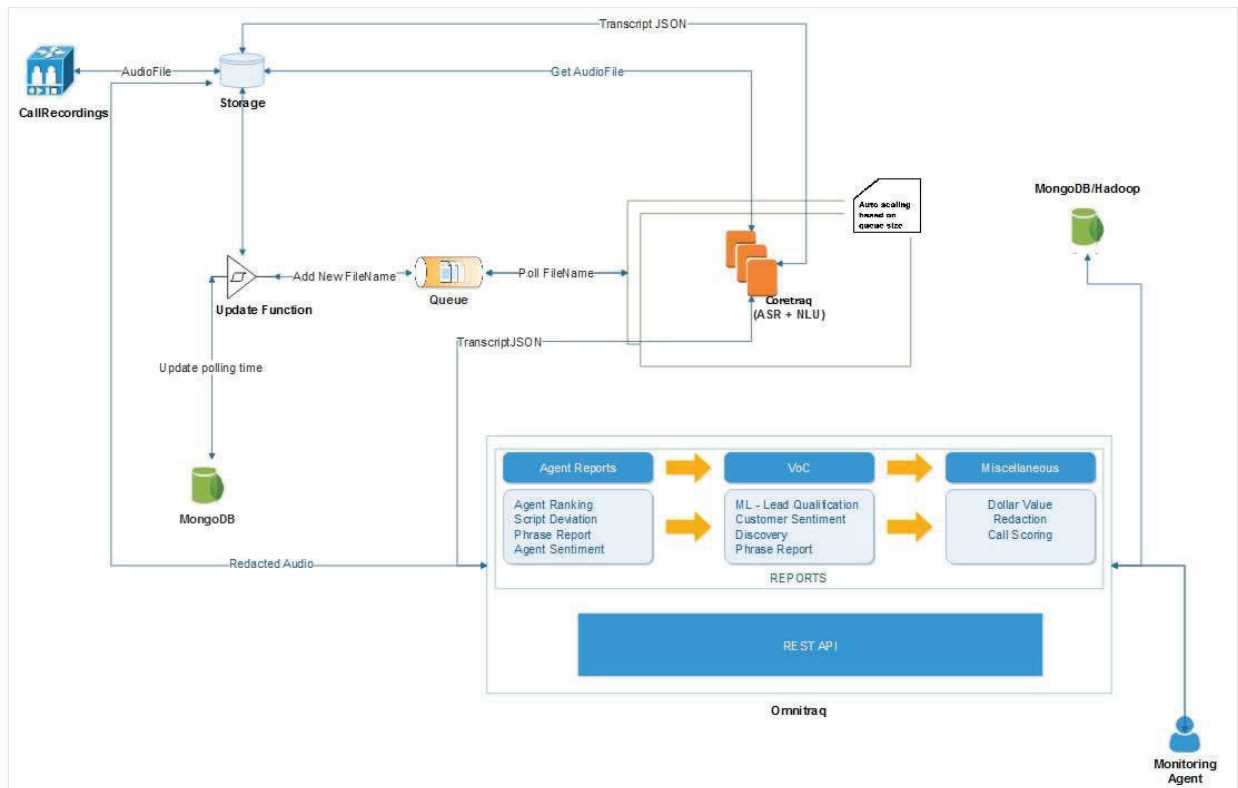
Scope of Services (numbering to match RFP)

4.1 Requirements

4.1.1 Yactraq to install on premise and connect to the Komutel call recording system



- 4.1.2 Yactraq to redact in text and audio all sensitive personally identifiable information including Social security number, driver's license numbers, credit card numbers, and bank account information
 - 4.1.2.1 Recordings will be redacted as per 4.1.2
 - 4.1.2.2 Transcripts will be redacted as per 4.1.2
 - 4.1.2.3 Screen captures are out of scope of redaction
- 4.1.3 Yactraq will enable audio playback through our audio player that will playback files with info redacted
- 4.1.4 Yactraq allows for PCI compliance, and will not redact specific variables such as phone numbers, dollar values, and dates and times, Yactraq will provide PCI compliance V4
- 4.2 Yactraq will redact sensitive data in both English and Spanish
- 4.3 Audio automatic redaction solution integrated with the Komlog call recorder platform



4.3.2.1 System implementation plan



Phase	Activity List	Day Count
Pre - Implementation	Reports and Requirement Sign Off	
	Sample Audio Files	1
	Test Environment Creation	2
	Quality Check for Transcription Accuracy	1
	Tuning based on Quality check results	2
	Test Phrase, script and Call scoring Configuration	1
	Quality Check for Accuracy levels of Configured Reports	1
	Tuning based on Quality check results	1
	Production Environment Creation	3
	Production Environment Test Configuration	2
	Final Quality Check	2
	Results Validation	2
Implementation	1. Server Specification Check	1
	2. Audio files Source(SFTP) access check	
	3. Installation of prerequisite packages	1
	4. File format Check	
	5. Configure Port required	
	5. Coretraq Installation	3
	6. Test Installation	
	7. MongoDB setup	
	8. Omnitraq Installation	2
	9. Check Installation	1
	10. Validated Meta-Data file	1
	11. Validate End to end process by executing some files	3
Reports Configuration	2	
Training and Handholding Sessions	3	
Post- Implementation	First week Monitor of Results	
	End of Week Feedback Discussion with Client	
	Configuration and Change Request Management	
	Third Week Feedback Discussion	
	Configuration and Change Request Management	
	45 day Feedback Discussion	
	Configuration and Change Request Management	
	On Going Product Support	
	L1 Enablement of Altitude Team	

4.3.2.2 Acceptance test plan enabling PCI compliance with Version 4

4.3.2.3 Capacity plan for scalability if other departments desire to perform automated redaction in the future. Note that capacity planning would depend on the requirements

Example

For 300 agents

Machine count –4

RAM : 32GB

vCPUs : 16

HDD/Storage : 150 GB



4.3.2.4 Support plan for software and support services

4.3.2.4.1 The product will be warrantied for the length of the contract including any renewal periods and provide 12 hour per day M-F technical support for standard issues, as well as an SLA for service uptime 24/7.

4.3.2.4.2 Updates

4.3.2.4.2.1 Yactraq provides software updates on as needed basis when new features or big fixes are identified, typically on a quarterly basis, but potentially more or less often. Yactraq requires port access which can be implemented and revoked specifically for the updates.

4.3.2.4.2.2 Yactraq can provide updates to the city with installation instructions, or you can open a port for our support team to install them with no effort from the city IT team.

4.3.2.4.3 Post-warranty services

4.3.2.4.3.1 Time and Materials:

4.3.2.4.3.1.1 Technical support is included with the package with no additional charges.

4.3.2.4.3.1.1.1 9:00am-4:00pm EST

4.3.2.4.3.1.1.2 The SLAs would be shared along with the SLA document during the final contract. Product support window for business days (Mon- Fri) would be 9 am EST to 4pm EST via email and ticketing system. All requests outside the business window would be batch processed based on priority level.

Additionally SLA's for Oracle cloud is as per (<https://www.oracle.com/ca-en/cloud/sla/>).

4.3.2.4.3.1.2 Any onsite technical support costs will be billed at \$250/hr with a minimum call out of 8 hours (\$2,000) plus actual flight costs to be approved by the city of Roseville:

4.3.2.4.3.1.2.1 Onsite tech support is technically available 24/7, to be agreed upon between the city of Roseville and Yactraq on an as needed basis.

4.3.2.4.3.1.2.2 Response time to be agreed upon based on severity of issue and upcoming travel availability

4.3.2.4.3.2 Support is included with all services packages during the duration of the software contract term.

4.3.2.4.3.1.2 Any onsite technical support costs will be billed at \$250/hr with a minimum call out of 8 hours (\$2,000) plus actual flight costs to be approved by the city of Roseville:

4.3.2.4.3.1.2.1 Onsite tech support is technically available 24/7, to be agreed upon between the city of Roseville and Yactraq on an as needed basis.

4.3.2.4.3.1.2.2 Response time to be agreed upon based on severity of issue and upcoming travel availability

4.3.2.4.3.3 Support is included with all services packages during the duration of the software contract term.

4.3.3 System documentation

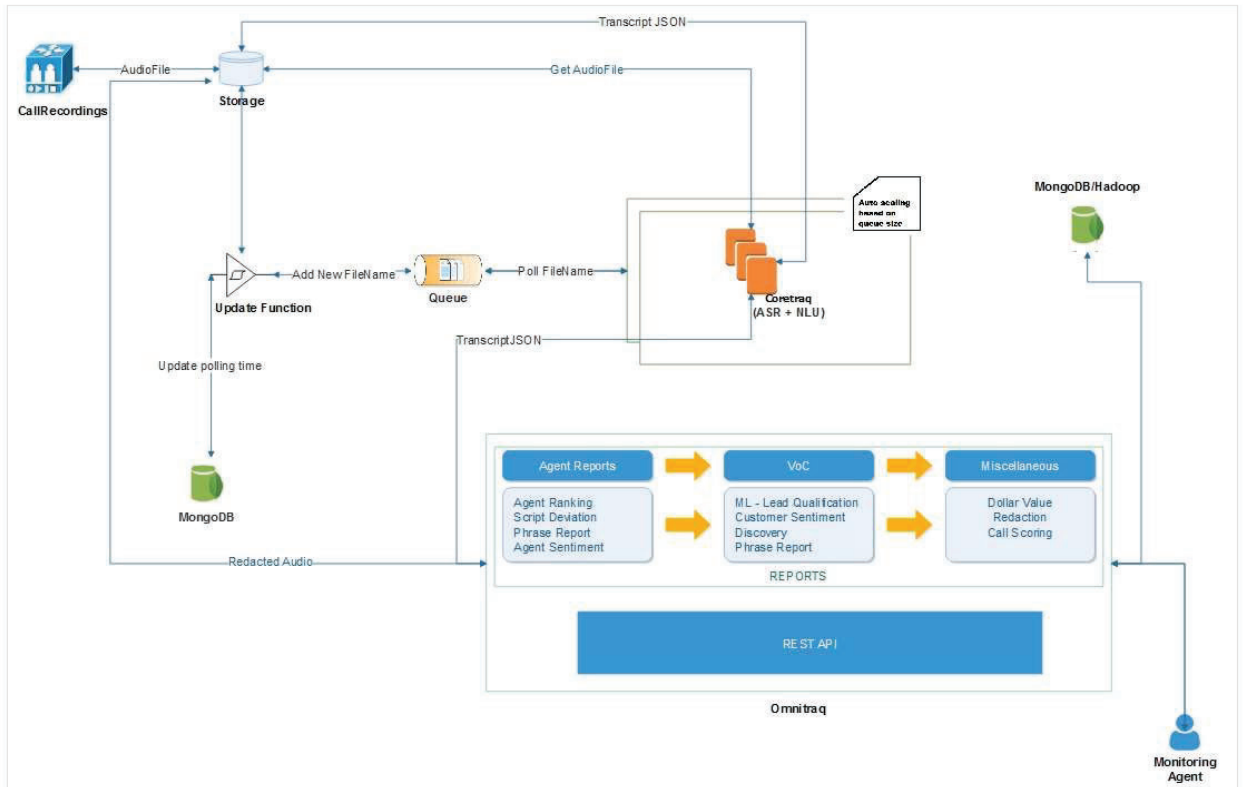
4.3.3.1 Manual to be provided upon contract award.



4.3.3.2 Operator Manual to be provided upon contract award.

4.3.3.3 System Administrator Manual to be provided upon contract award.

4.3.3.4



4.3.3.5 Any documentation developed specifically for the City shall be provided as editable electronic documents. The City reserves the right to duplicate materials for internal purposes only

4.3.4 Training

4.3.4.1 System Administrator training

4.3.4.1.1 Include course for (3) attendees in an instructor-led online course.

Admin Training		
Sl No	Module Name	Session Duration
1	Admin Console	3 Hours
2	Configuration	
3	User Management	
4	Access Control Centre	
5	Dashboard	
6	Team Mapping	
7	Product Overview	
8	Best Practice Sharing	



4.3.4.1.2 Shall be led by Yactraq’s director of product management who has the most detailed platform knowledge, and extensive training background from large multi-national telecom corporations.

4.3.4.1.3 Customized to reflect the City of Roseville's system topology, configuration and capabilities

4.3.4.1.4 Proposers are encouraged to include any additional training they feel may be beneficial to the City

Training- Knowledge Forum		
SI No	Module Name	Session Duration
1	Best Practice Sharing	2 Hours
2	Speech Analytics Overview	
3	Speech Analytics benefits	
4	Customer Use Case Studies	
5	Product Feedback	
6	Dashboard designing	

4.3.4.2 User training

4.3.4.2.1 Include course for (5) attendees in an instructor-led online course.

Training- Supervisor		
SI No	Module Name	Session Duration
1	Dashboard	Multiple Sessions - Total duration 6 hours
2	Call Analytics	
3	Agent Sentiment Analysis(Word based, Prosodic and 360)	
4	Customer Sentiment Analysis(Word based, Prosodic and 360)	
5	Advanced Search	
6	Call Detail Analysis	
7	E discovery	
8	Quality Automation	
9	Call Categorisation	
10	Self Help Use	
11	Configuration	
12	Coaching and Feedback	



Training- Agent		
SI No	Module Name	Session Duration
1	Dashboard	Multiple Sessions - Total duration 4 hours
2	Call Analytics	
3	Agent Sentiment Analysis(Word based, Prosodic and 360)	
4	Customer Sentiment Analysis(Word based, Prosodic and 360)	
5	Advanced Search	
6	Call Detail Analysis	
7	E discovery	
8	Quality Automation	
9	Call Categorisation	
10	Self Help Use	

4.3.4.2.2 Shall be led by Yactraq’s director of product management who has the most detailed platform knowledge, and extensive training background from large multi-national telecom corporations

4.3.4.2.3 Customized to reflect the City of Roseville's system topology, configuration and capabilities

5.0 Assurance of project team

Yactraq will maintain the existing project team noted in 6.5 and will provide the City with any proposed changes to the team for approval.

6.4 Experience and Reference:

1. Nuxiba Telecom : Project Details: Speech Analytics for customers of Nuxiba. Scope of the project was to improve revenue and customer satisfaction levels by identifying areas of improvement. Also wanted to improve the compliance part by auditing scripts spoken on calls. Key features used includes Keyphrase spotting for identifying customer want, sentiment analysis of both agent and customer, script deviation for compliance monitoring

Date of Project : Mar 2022, Name of Contact : Mario Gamero Ph: +52 5511078510, Country Mexico

2. Sunbasket : Project Details: Speech Analytics for customer need and verbatim customer feedback coding. Scope of the project was to improve revenue and customer satisfaction levels by identifying areas of improvement. Also wanted to automate the verbatim customer feedback coding by integrating with Salesforce CRM system. Omnichannel customer journey for customer sentiment mapping. Key features used includes Keyphrase spotting for identifying customer want, sentiment analysis of both agent and customer, Predictive Machine Learning Enabled verbatim customer feedback coding for identifying route cause of failures to eliminate customer churn
Date of Project : June 2021, Name of Contact : Shawn Satterfield Ph: +1 505 252 0733, Country USA

3. Homestars : Project Details: Speech Analytics for customers of Homestars. Scope of the project was to improve revenue and customer satisfaction levels by identifying areas of improvement.



Also wanted to improve the compliance part by auditing scripts spoken on calls. Key features used includes Keyphrase spotting for identifying customer want, sentiment analysis of both agent and customer, script deviation for compliance monitoring, Redaction of key identifiers and credit card numbers from transcripts as well as selective muting of audios with the card details. Audio playback function for call monitoring and audit purposes.

Date of Project : Feb 2023, Name of Contact : Niraj Bahl Ph: 1-877-488-0312, Country Canada

6.5 Team Qualifications

Jon Arnett – SVP Global Sales: Jon heads the sales and Biz Dev functions and would act as a SPOC for account related activities. Jon Arnett is a seasoned SaaS executive, having led teams of Sales, Marketing, Product, Implementation, and Support professionals in various roles in Canada and the US. Jon was responsible for starting Liveperson Canada, the global leader in chat/digital messaging, and AI conversational commerce solutions. Just before Liveperson, he also started IHS Markit – Carfax Canada, the global leader in vehicle history data which sold in a merger acquisition for \$680M. Prior to that Jon has held leadership roles in many big data and tech SaaS firms for over 20 years. Jon holds his MBA, and is bilingual on French and English. Jon has been with Yactraq for 6 months.

Rahul Kadam – Developer: Responsible for implementation and support of the product. Rahul holds Computer Science Engineering (BTech) and is based out of Canada. Ishan has been a part of Yactraq for six months.

Ishan Sharma – Sr Developer: Responsible for implementation and support of the product. Ishan has been associated with multiple projects for Yactraq across verticals like Telco, Retail, BFSI and IT/ITES to name a few. Ishan holds Computer Science Engineering (BTech) and is based out of Canada. Ishan has been a part of Yactraq for more than a year.

Anagha Sonare – QC & Testing: Responsible for testing and functioning of the product. Roles include Bugs identification, UAT and configurations checking. Anagha has been with Yactraq for 2 years and is a Computer Science Engineer based out of India

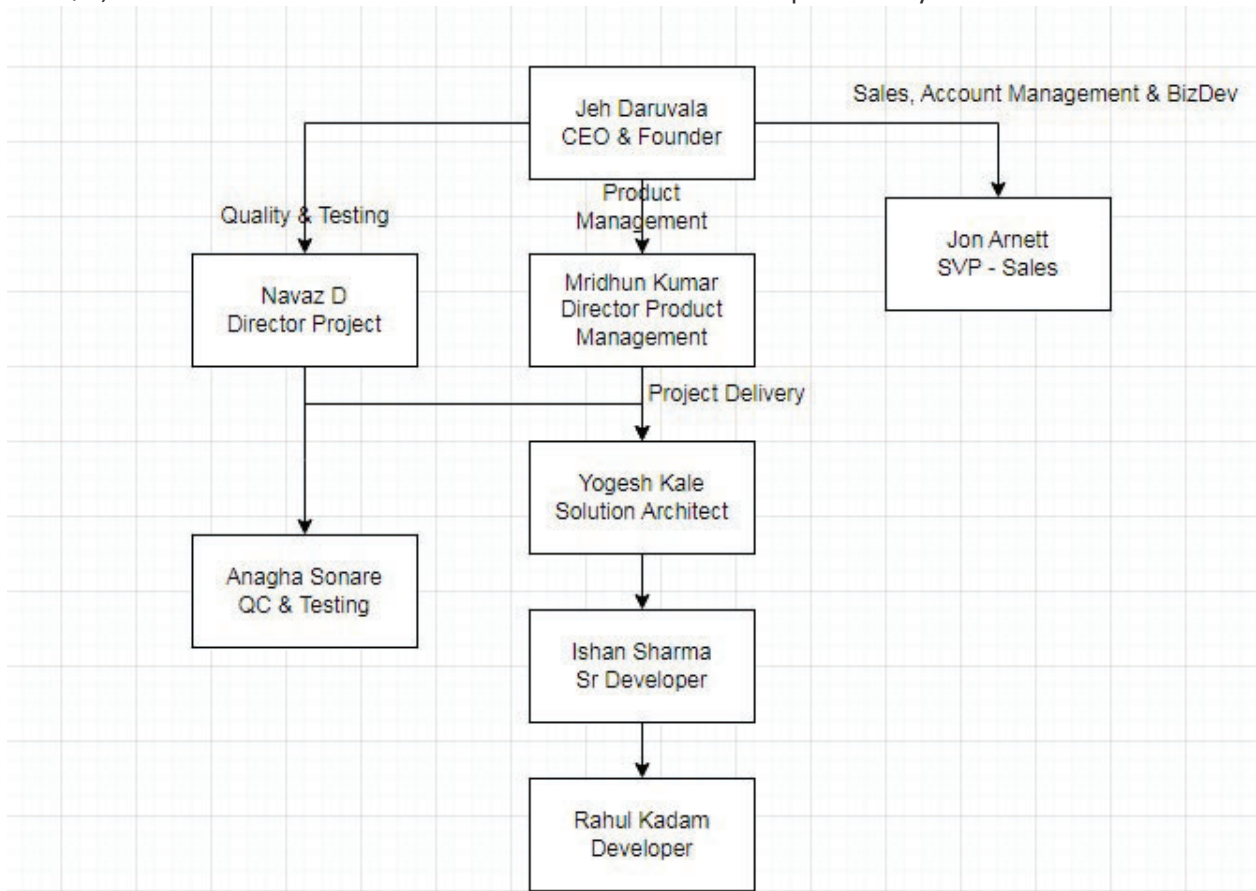
Yogesh Kale- Solutions Architect: Responsible for overseeing the technical aspect of the project. Yogesh comes with extensive knowledge about Yactraq's products and services. Closely works with the Operations team and Product team for successful implementation. Yogesh is a Computer Science Engineer(BTech) based out of India. Yogesh has been with Yactraq for five years

Navaz D – Director Program Management: Responsible for production configurations, testing and Delivery of the project. Closely works with Operations and product team for a successful implementation. Navaz holds a degree in Commerce and Analytics and has been associated with Yactraq for 4 years.

Mridhun Kumar(MK) - Director Product Management : Responsible for project scoping, solution fitment, Delivery and training and handholding of the project. Ensures a smooth transition during the overall adoption of the product. MK brings over 16 years of experience in Business Development, Sales & Account Management, Consulting and Operations in the Technology sector. MK possesses extensive knowledge in Contact Center Solution Operations and Services having



managed Dell Solution Station. MK hold BTech in Electronics and Communication from the Cochin University of Science and Technology and has worked with various BI, CRM and other applications like Qlik, SAP and Salesforce. MK has been associated with Yactraq for three years.



6.6 Project Understanding:

Yactraq will provide post-call transcription for the recordings stored in the Komutel “Komlog” system currently deployed at the city of Roseville. Yactraq will provide data analytics which include quality automation, compliance ratings based on a set of criteria as defined by the City. Yactraq will further provide full redaction of sensitive customer data as defined by the City, including credit cards, social security numbers, driver’s license, bank information, and other such data as deemed necessary during the project implementation; redaction will be in the transcript text itself, and we can also mute the section of audio from the original recording to ensure full PCI compliance.

We will provide an audio player without our software which can be played manually, or specific keywords, or redacted sections clicked, and the audio player will automatically start at the word/phrase in question.

We understand the implementation will be an on-premise installation at a City facility, and be a minimum of 370 hours of audio per month; we have no real limitations to the amount of audio that can be processed.

Yactraq will comply which PCI version 4 immediately at the start of the project, rather than starting with V.3 and moving to V.4.



We also support transcription for over 42 languages at the present time, and always adding more. For the initial rollout we can meet your Optional requirement of both English and Spanish.

Yactraq has a history of implementing projects that are much more complex than what's required by the city, so we would consider this a very straight forward setup, and have previously implemented enterprise projects 100X this size, so our team is completely confident in this project.

Additionally, one unique feature about Yactraq is our ability to be nimble and to customize various aspects of the software or data outputs as the needs of the City change over time. Many other transcription and analytics companies do not have the ability to customize their platform, however we are happy to do so.

Finally Yactraq has the ability for rapid processing of audio data, including the ability to process in real-time if required in the future. We also have advanced AI and Machine learning capabilities that the City may wish to add-on in the future where we can provide things like real-time agent assist/suggest BOTs for City employees which automatically search your knowledge base to help speed up the service for your customers in the utility space and others. We will provide training using 1-2 internal trainers who have thousands of hours training fortune 500 companies in related SaaS software.

We very much look forward to becoming a partner to the City in this project.



Scoping- Assumptions, Terms and Requisites

1. Customer will provide all necessary approvals required by Yactraq team to integrate with call recording systems to collect audio files.
2. Prices mentioned are for software license only. They do not include professional services costs beyond basic setup. For on premises implementations, customers need to bare the data center costs in addition to the professional services and license costs.
3. Annual Invoicing to the customer would be raised on 1st day of the starting month, to be paid in advance. Payments to be processed within 30 days of raising the invoice.
4. Customer can upgrade the package at any time during the annual contract and pay the difference in remaining months, however cannot downgrade the contract during the contract period.
5. All prices are in US Dollars and do not include any applicable taxes, fees, or other government levies.
6. Necessary Forms and Scripts to be provided by the customer team for key phrase spotting, agent performance evaluation, and Quality audit and script deviation. The configurable items (In scope and Out of Scope) would be identified by both parties and only those elements would be evaluated using speech analytics. Customer will provide the required key phrases, keywords for criteria and parameter



(Sample Contract)

This Agreement is made between Yactraq Online Inc. a British Columbia corporation with offices at 321 Water Street, Suite 501, Vancouver, BC V6B1B8, Canada (“Yactraq”), and the “Customer” listed below. This Agreement is governed by this Cover Sheet and the accompanying Yactraq Software License Agreement (“T&Cs”). Capitalized words not defined in this Cover Sheet shall have the meaning ascribed to such words in the T&Cs. This Agreement will become effective when this Cover Sheet is executed by authorized representatives of both parties (the “Effective Date”).

CUSTOMER INFORMATION:

Business Name: City of Roseville Contact Person: _____
Address: _____ Telephone Number: _____
_____ Fax Number: _____
_____ E-Mail Address: _____

TERM: Effective Date: 2023/XX/XX

PRODUCTS/SERVICES:

- Key-phrase spotting (limit of 100 key phrases)
- Agent performance evaluation
- Call categorization
- Call indexing
- Free-form database search with logic
- Word and number redaction
- Sentiment Analysis/360 Emotion detection
- Detailed Transcription

FEES: Customer shall pay Yactraq the fees set forth below for the rights granted pursuant to this Agreement.

\$12.75 per hour * 370 hours
\$4,717.50 per month recurring software license fees
\$3,250 one-time setup fee

Total annual first year: \$59,860 USD

Annual Invoicing to the customer would be raised on 1st day of the starting month, to be paid in advance.
Payments to be processed within 30 days of raising the invoice

*Note that all amounts listed on this cover sheet are exclusive of all applicable taxes in USD.



The Parties agree that this Agreement may be executed by signing and returning a signed copy by fax or a scanned signed copy by email. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Agreed by the parties as written below:

CUSTOMER

YACTRAQ ONLINE INC.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Yactraq Online Software License – Terms and Conditions

ATTENTION: THE SOFTWARE PROVIDED UNDER THIS AGREEMENT ARE BEING LICENSED TO YOU BY YACTRAQ ONLINE INC. AND ARE NOT BEING SOLD. THIS SOFTWARE IS PROVIDED UNDER THE FOLLOWING AGREEMENT THAT SPECIFIES WHAT YOU MAY DO WITH THE SOFTWARE AND CONTAINS IMPORTANT LIMITATIONS ON REPRESENTATIONS, WARRANTIES, CONDITIONS, REMEDIES, AND LIABILITIES.

IMPORTANT: BEFORE USING THIS SOFTWARE, PLEASE CAREFULLY READ THIS AGREEMENT WHICH CONTAINS THE TERMS AND CONDITIONS UNDER WHICH YOU ARE ACQUIRING A LICENSE TO USE THE SOFTWARE. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT PLEASE DO NOT USE THE SOFTWARE. IF YOU ACCESS OR USE THE SOFTWARE, YOU WILL BE ACCEPTING THIS AGREEMENT, AND YOU WILL HAVE ACCEPTED AND AGREED TO THESE TERMS AND CONDITIONS. THE SOFTWARE IS ALSO PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS.

IF YOU ARE AN AGENT OR EMPLOYEE OF ANOTHER ENTITY YOU REPRESENT AND WARRANT THAT (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH ENTITY'S BEHALF AND TO BIND SUCH ENTITY, AND (II) SUCH ENTITY HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER.

1. DEFINITIONS AND INTERPRETATION.

1.1 *Definitions.* As used in this Agreement:

“Anonymized Derived Data” means Derived Data which has been stripped of any Customer Data or Customer Derived Data and has been aggregated with other service data so that no business confidential or identifying information about Customer is discoverable.

“Confidential Information” means all information regarding a party's business, including, without limitation, technical, marketing, financial, employee, planning, and other confidential or proprietary information, disclosed under this Agreement, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. Confidential Information includes the Customer Data, information derived from or concerning the Yactraq Solution and the terms of this Agreement.

“Customer Data” means any audio file or content, video file or content, data, information or information contained in any file, database, or other document or media submitted by Customer through the Yactraq Solution or provided by Customer to Yactraq as part of the Yactraq Solution.



“**Customer Derived Data**” means Derived Data which is specific to Customer’s business and which contains business confidential or identifying information.

“**Derived Data**” means any data or information that is a result of any modification, adaption, revision, translation, abridgement, condensation, compilation, evaluation, expansion or other recasting or processing of the Customer Data, for example, as a result of Yactraq’s observation, analysis, or visualization of Customer Data.

“**Fees**” means the fees to be paid by Customer in respect of the Yactraq Solution and any related services all as set out in a Purchase Order.

“**Purchase Order**” means a document which sets out details of the Yactraq Solution, Fees and any other terms or conditions relating to Customer’s license of the Yactraq Solution.

“**Yactraq Solution**” means the Yactraq software solution (including any application program interfaces or software components) indicated in a Purchase Order made available to Customer in accordance with the terms of this Agreement.

1.2 *Precedence.* In the event of any inconsistency between a Purchase Order and this Agreement, the terms of the Purchase Order will govern.

2. YACTRAQ SOLUTION.

2.1 *License.* Subject to the terms of this Agreement, including, without limitation, the payment of the Fees set forth in Section 4 hereof, Yactraq hereby grants to Customer a non-sub licensable, non-transferable, non-exclusive right to access and use the Yactraq Solution during the term of this Agreement solely for Customer’s internal business purposes and not for resale or to provide services to third parties.

2.2 *Hosted Software; Hosting Requirements.* If a Purchase Order specifies that Customer is required to host, operate and/or maintain Yactraq Hosted Software on Customer's computer systems, then:

- (a) Subject to the terms of this Agreement, including, without limitation, the payment of the Fees set forth in Section 4 hereof, Yactraq hereby grants to Customer a non-sub licensable, non-transferable, non-exclusive license to use the Yactraq Hosted Software on the Customer’s computer systems during the term of this Agreement solely for Customer’s internal business purposes and not for resale or to provide services to third parties;
- (b) Customer shall host, operate and maintain on its computer systems, at its sole cost and expense, such Yactraq Hosted Software in the manner specified in a Purchase Order and/or as otherwise specified by Yactraq from time to time; and



- (c) Customer shall provide, at its sole cost and expense, such assistance as is reasonably required by Yactraq for the purposes of configuring, installing, operating and maintaining such Yactraq Hosted Software for use in connection with Customer's computer systems and the overall Yactraq Solution.

2.3 Customizations and Additional Services. Any customizations or additional services requested by Customer may be performed at extra cost to the Customer, pursuant to a separate written agreement mutually agreed upon between the parties.

3. CUSTOMER'S USE OF THE YACTRAQ SOLUTION.

- 3.1 *Customer Data.* Customer is solely responsible for the Customer Data and will not provide or transmit any

Customer Data or any other information, data or material that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; or (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information. Yactraq may take remedial action if Customer Data violates this Section 3.1, however, Yactraq is under no obligation to review Customer Data for accuracy or potential liability. All use of the Yactraq Solution in conjunction with any Customer Data is the responsibility of Customer.

- 3.2 *Use Restrictions.* Customer will not, and will not attempt to: (a) reverse engineer, disassemble or decompile any component of the Yactraq Solution; (b) interfere in any manner with the operation of the Yactraq Solution or the hardware and network used to operate the Yactraq Solution; (c) sublicense or transfer any of Customer's rights under this Agreement, or otherwise use the Yactraq Solution for the benefit of a third party or to operate a service bureau; (d) modify, copy or make derivative works based on any part of the Yactraq Solution; or (e) otherwise use the Yactraq Solution in any manner that exceeds the scope of use permitted under Sections 2.1 and 2.2 hereof.

4. FEES, PAYMENT AND SUSPENSION OF SERVICES.

- 4.1 *Fees.* As consideration for the provision of access to the Yactraq Solution (including the Yactraq Solution), Customer will pay Yactraq the Fees.

- 4.2 *Other Payment Terms.* Customer shall reimburse Yactraq for all expenses (including reasonable attorneys' fees) incurred by Yactraq to collect any amount that is not paid when due. All Fees owed by Customer in connection with this Agreement are exclusive of, and Customer shall pay, all sales, use, excise and other taxes that may be levied upon Customer in connection with this Agreement, except for employment taxes and taxes based on Yactraq's net income. Yactraq reserves the right (in addition to any other rights or remedies Yactraq may have) to discontinue the Yactraq Solution and Customer's access to the Yactraq Solution if any Fees are more than thirty (30) days overdue until such amounts are paid in full. Customer shall maintain complete, accurate and up-to-date Customer billing and contact information at all times.



5. CONFIDENTIAL INFORMATION.

- 5.1 *Obligation.* Each party agrees (a) to hold the other party's Confidential Information in strict confidence, (b) to limit access to the other party's Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (c) not to use such Confidential Information for any purpose except as expressly permitted hereunder. Notwithstanding the foregoing, the receiving party will not be in violation of this Section 5.1 with regard to a disclosure that was in response to a valid order or requirement by a court or other governmental body, provided that the receiving party gives the other party with prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information. For greater certainty the Yactraq Solution constitutes confidential information and trade of Yactraq and shall be treated in accordance with the terms of this Section 5.
- 5.2 *Exceptions.* The restrictions on use and disclosure of Confidential Information set forth above will not apply to any Confidential Information, or portion thereof, which (a) is or becomes a part of the public domain through no act or omission of the receiving party, (b) was in the receiving party's lawful possession prior to the disclosure, as shown by the receiving party's competent written records, (c) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, as shown by the receiving party's competent written records, or (d) is lawfully disclosed to the receiving party by a third party without restriction on disclosure.

6. OWNERSHIP.

- 6.1 *Yactraq Solution and Technology.* Customer acknowledges that Yactraq retains all right, title and interest in and to the Yactraq Solution and all software, materials, formats, interfaces, information, data, content and information and technology used by Yactraq or provided to Customer in connection with the Yactraq Solution, and any modifications to or derivative works of any of the foregoing (the "**Yactraq Technology**"), and that the Yactraq Technology is protected by intellectual property rights owned by or licensed to Yactraq. Other than as expressly set forth in this Agreement, no license or other rights in the Yactraq Technology are granted to the Customer, and all such rights are hereby expressly reserved by Yactraq. Yactraq shall have a royalty-free, worldwide, transferable, sublicense able, irrevocable, perpetual license to use or incorporate into the Yactraq Solution any suggestions, enhancement requests, recommendations, requirements or other feedback provided by Customer relating to the Yactraq Solution. Without limiting the foregoing in this Section 6.1, Customer may not replicate, improve, modify, or create variations of any Yactraq Technology or Yactraq's Confidential Information. Customer may not make, use, sell, exploit, commercialize or seek patent protection for any compositions or matter relating to the Yactraq Technology or Yactraq' Confidential Information, new applications and uses for the Yactraq Technology and/or Yactraq'



Confidential Information, and combinations of the Yactraq Technology with other products or software.

- 6.2 *Customer Data.* Customer retains all right, title and interest in and to the Customer Data. Subject to Section 6.2, Yactraq will only use Customer Data in the course of providing the Yactraq Solution under this Agreement.

Customer will be solely responsible for providing all Customer Data required for the proper operation of the Yactraq Solution. Customer grants to Yactraq all necessary licenses in and to such Customer Data solely as necessary for Yactraq to provide the Yactraq Solution to Customer. Yactraq will not knowingly use or access any Customer Data unless authorized to do so by Customer and, in such circumstances, Yactraq will access and use such Customer Data only as required to perform requested services on behalf of Customer.

- 6.3 *Derived Data.* Yactraq will have the right to create Derived Data under this Agreement and will own all right and title in all Derived Data. Derived Data (including Anonymized Derived Data) is used for analytics and for service improvement including to improve the Yactraq Solution. However, for greater certainty, any Customer Derived Data forming part of the Derived Data will be used by Yactraq to provide the services and for internal research and development only.

7. TERM AND TERMINATION.

- 7.1 *Term.* The initial term of this Agreement will commence on the Effective Date and continue until terminated in accordance with the terms hereof.
- 7.2 *Effect of Termination.* Upon the termination of this Agreement for any reason, (a) any amounts owed to Yactraq under this Agreement before such termination will become immediately due and payable; and (b) each party will return to the other all property (including any Confidential Information) of the other party in its possession or control.
- 7.3 *Survival.* Sections 4, 5, 6, 7.4, 7.5, 8, 9, 10 and 11 and any other sections hereof which ought reasonably to survive will survive the termination or expiration of this Agreement.

8. WARRANTY; DISCLAIMER.

Except for any representations and warranties expressly set forth in this Agreement, Yactraq makes no warranty, representation or condition of any kind concerning the Yactraq Solution or Yactraq Technology. ACCORDINGLY, THE YACTRAQ SOLUTION, THE YACTRAQ TECHNOLOGY AND ALL OTHER DATA, MATERIALS, AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY YACTRAQ AND ITS SUPPLIERS ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTIES, REPRESENTATIONS OR



CONDITIONS OF ANY KIND. YACTRAQ AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. YACTRAQ DOES NOT WARRANT THAT THE YACTRAQ SOLUTION WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, COMPLETELY SECURE, OR VIRUS-FREE.

9. INDEMNITY.

9.1 *Yactraq Indemnity.* If any action is instituted by a third party against Customer based upon a claim that the Yactraq Solution, as provided by Yactraq, infringes a Canadian or United States patent or copyright, Yactraq shall defend such action at its own expense on behalf of Customer and shall pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement of such claim. Yactraq may, at its option and expense, and as Customer's exclusive remedy hereunder, (a) procure for Customer the right to continue using the Yactraq Solution, (b) replace or modify the Yactraq Solution so that it is no longer infringing but continues to provide comparable functionality, or (c) terminate this Agreement and Customer's access to the Yactraq Solution and refund any amounts previously paid for the Yactraq Solution attributable to the remainder of the then-current term of this Agreement. Yactraq shall have no liability to Customer for any infringement action which arises out of a breach of the terms and conditions of this Agreement by Customer, or of the use of the Yactraq Solution (i) after it has been modified by Customer or a third party without Yactraq's prior written consent, or (ii) in combination with any other service, software or process not provided by Yactraq. This Section sets forth the entire obligation of Yactraq and the exclusive remedy of Customer against Yactraq or any of its suppliers for any alleged infringement or adjudicated infringement or misappropriation of any patent, copyright or other intellectual property right or proprietary right by the Yactraq Solution.

9.2 *Conditions.* Any party that is seeking to be indemnified under the provision of this Section 9 (an

"Indemnified Party") must (a) promptly notify the other party (the "Indemnifying Party") of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a "Claim"), and (b) give the Indemnifying Party the sole control over the defense of such Claim. However, if an Indemnified Party fails to notify the Indemnifying Party promptly, the Indemnifying Party will be relieved of its obligations under this Section 9 only if and to the extent that its ability to defend the Claim is materially prejudiced by such failure. The Indemnifying Party may settle or compromise a Claim without the Indemnified Party's prior approval of any such settlement or compromise only if (A) such settlement involves no finding or admission of any breach by an Indemnified Party of any obligation to any third party, (B) such settlement has no effect on any other claim that may be made against an Indemnified Party or any defense that an Indemnified Party may assert in any such claim, and (C) the sole relief provided in connection with such settlement is monetary damages that are paid in full by the Indemnifying Party. Upon the Indemnifying Party's assumption of the defense of such Claim, the Indemnified Party will cooperate with the Indemnifying Party in such defense, at the Indemnifying Party's expense.



10. LIMITATION OF LIABILITY.

- 10.1 *Limitation of Liability.* YACTRAQ'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), THE YACTRAQ SOLUTION OR THE YACTRAQ TECHNOLOGY, WILL NOT EXCEED THE APPLICABLE INSURANCE LIMITS PLUS THE AMOUNT ACTUALLY PAID TO YACTRAQ BY CUSTOMER THE IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE CUSTOMER'S FORMAL WRITTEN NOTICE OF THE CLAIM FOR LIABILITY HEREUNDER.

IN NO EVENT WILL YACTRAQ BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE YACTRAQ SOLUTION OR YACTRAQ TECHNOLOGY, EVEN IF YACTRAQ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

11. GENERAL PROVISIONS

- 11.1 *Assignment.* Customer shall not assign any rights or obligations arising under this Agreement, whether by operation or law or otherwise, without the prior written consent of Yactraq. This Agreement shall inure to the benefit of and shall be binding on the successors and assignees of the parties.
- 11.2 *Governing Law and Venue.* This Agreement will be governed by and construed in accordance with the laws of the State of California and the applicable federal laws of California therein without giving effect to principles of conflict of laws.
- 11.3 *Notices.* Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth above (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (a) delivered personally, (b) sent via certified mail (return receipt requested) (c) sent via cable, telegram, telex, tele copier, fax (all with confirmation of receipt), or (d) sent by recognized air courier service.
- 11.4 *Entire Agreement.* This Agreement is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify it.
- 11.5 *Severability and Waiver.* In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining



provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

- 11.6 *Relationship of the Parties.* The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.