**PROFESSIONAL SERVICES CONTRACT**

**Contract #**

This Contract (“this Contract”), entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “FSSA and or State”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**1. Duties of Contractor**.

The Contractor shall provide the following services relative to this Contract. A detailed list of duties is set forth in **Exhibit 1**, attached hereto and incorporated herein.

**2. Consideration**.

The Contractor will be paid at the rates described on **Exhibit 1**, which is attached hereto and incorporated herein, for performing the duties set forth above. Total remuneration under this Contract shall not exceed $ \_\_\_\_\_\_\_\_.

**3. Term**.

This Contract shall be effective for a period of \_\_\_\_\_\_\_\_\_. It shall commence on \_\_\_\_\_\_\_ and shall remain in effect through \_\_\_\_\_\_\_\_.

**4. Access to Records**.

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

**5. Assignment; Successors**.

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State’s prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor’s legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

**6. Assignment of Antitrust Claims.**

As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

**7. Audits**.

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a “Contractor” under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a “subrecipient” and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq*.

**8. Authority to Bind Contractor**.

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

**9. Changes in Work**.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**10. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B.  The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq*., IC § 4-2-7, *et seq*. and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.**If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General’s website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor’s liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC § 5-22-3-7:

1. The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

* 1. IC §24-4.7 [Telephone Solicitation Of Consumers];
  2. IC §24-5-12 [Telephone Solicitations]; or
  3. IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

1. The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

**11. Condition of Payment**.

All services provided by the Contractor under this Contract must be performed to the State’s reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

**12. Confidentiality, Security and Privacy of Personal Information**.

1. Terms used, but otherwise not defined in this Contract shall have the same meaning as those found in 45 CFR Parts 160, 162, and 164.
2. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 (sections 1171 through 1179 of the Social Security Act), including any subsequent amendments to such Act.
3. “HIPAA Rules” mean the rules adopted by and promulgated by the US Department of Health and Human Services (“HHS”) under HIPAA and other relevant federal laws currently in force or subsequently made, such as the Health Information Technology for Economic and Clinical Heath Act (“HITECH”), as enumerated under 45 CFR Parts 160, 162, and 164, including without limitation any and all additional or modified regulations thereof. Subsets of the HIPAA Rules include:
4. “HIPAA Enforcement Rule” as defined in 45 CFR Part 160;
5. “HIPAA Security Rule” as defined in 45 CFR Part 164, Subparts A and C;
6. “HIPAA Breach Rule” as defined in 45 CFR Part 164, Subparts A and D; and
7. “HIPAA Privacy Rule” as defined in 45 CFR Part 164, Subparts A and E.
8. If Contractor is deemed a Business Associate to the State, Contractor is hereby authorized by the State to create, receive, maintain, and/or transmit Protected Health Information (“PHI”) and other Personally Identifiable Information (meaning personal information as collectively defined in IC 4-1-6-1 and IC 4-1-11-3, “PII”) on the State’s behalf pursuant to and consistent with the Services performed by Contractor under this Contract.
9. Contractor agrees that as a Business Associate to the State it is obligated to comply with the HIPAA Rules, as such Rules apply to Business Associates, throughout the term of this Contract and thereafter as may be required by federal law and such compliance will be at Contractor’s sole expense. Further:
10. Contractor will not use or further disclose PHI or PII except as expressly permitted by this Contract or as required by law. Contractor understands that this prohibition expressly applies to any information provided by the Social Security Administration, directly or through the State. It is further provided that nothing in this Contract shall be construed to permit Contractor use or disclose PHI in a manner that would violate the provisions of the HIPAA Privacy Rule as such Rule applies to the State with regard to the Services performed by Contractor under this Contract or otherwise cause the State to be non-compliant with the HIPAA Privacy Rule.
11. Contractor understands it must fully comply with the HIPAA Security Rule and will employ appropriate and compliant safeguards to reasonably prevent the use or disclosure of PHI and PII other than as permitted by this Contract or required by the HIPAA Privacy Rule. Such safeguards will be designed, implemented, operated, and managed by Contractor at Contractor’s sole expense and following the Contractor’s best professional judgment regarding such safeguards. Upon the State’s reasonable request, Contractor will review such safeguards with the State. Contractor will implement the following HIPAA requirements for any forms of PHI or PII that the Contractor receives, maintains, or transmits on behalf of the State:
    * 1. Administrative safeguards under 45 CFR 164.308;
      2. Physical safeguards under 45 CFR 164.310;
      3. Technical safeguards under 45 CFR 164.312; and
      4. Policies and procedures and documentation requirements under 45 CFR 164.316.
12. Contractor understands that it is subject to the HIPAA Enforcement Rule under which Contractor may be subject to criminal and civil penalties for violations of and non-compliance with the HIPAA Rules.
13. Improper Disclosure, Security Incident, and Breach Notification.
    1. Contractor understands that it is subject to the HIPAA Breach Rule.
    2. For the purposes of this Contract, the term Breach has the same meaning as defined in the HIPAA Breach Rule. The term “Security Incident” shall mean an action or event that has resulted in the improper use or disclosure of PHI or PII in Contractor’s safekeeping (in violation of this Contract and/or in violation of the HIPAA Privacy Rule), the reasonable possibility or suspected possibility that an improper use or disclosure of PHI or PII may have occurred, or circumstances in which PHI or PII has been exposed to an opportunity for improper use or disclosure.
    3. If a Security Incident occurs or if Contractor suspects that a Security Incident may have occurred with respect to PHI and/or PII in Contractor’s safekeeping:
       * 1. Contractor shall notify the State of the Security Incident within one (1) business day of when Contractor discovered the Security Incident; such notification shall be made to the FSSA Privacy & Security Office in a manner reasonably prescribed by the FSSA Privacy & Security Officer and shall include as much detail as the Contractor reasonably may be able to acquire within the one (1) business day.
         2. For the purposes of such Security Incidents, “discovered” and “discovery” shall mean the first day on which such Security Incident is known to the Contractor or, by exercising reasonable diligence, would have been known to the Contractor. Regardless of whether the Contractor failed to exercise reasonable diligence, improperly delaying the notification of discovery beyond the one day requirement, the Contractor will notify the FSSA Privacy & Security Office within one day of gaining actual knowledge of a breach.
         3. In collaboration with the FSSA Privacy & Security Office, Contractor shall undertake all commercially reasonable efforts necessary to thoroughly investigate the Security Incident and to provide all results of such investigation to the FSSA Privacy & Security Office, including but not limited to Contractor personnel involved, source and cause of the Security Incident, specific information disclosed, disclosure victims (those whose PHI/PII was disclosed), disclosure recipients, supporting materials, actions taken to mitigate or stop the Security Incident, and similar details.
         4. Contractor’s investigation must be undertaken expeditiously and completed to the extent that a determination of whether a Breach has occurred can be reasonably made, including the identification of the victims or likely victims, within a reasonable timeframe as mutually agreed upon with the FSSA Privacy & Security Office, from the date of discovery of the Security Incident. Contractor shall provide details of its investigation to the FSSA Privacy & Security Office on an ongoing basis until the investigation is complete.
         5. Contractor and the FSSA Privacy & Security Office will collaborate on the results of Contractor’s investigation; the determination as to whether a Breach has occurred rests solely with the FSSA Privacy & Security Office.
         6. If it is determined by the FSSA Privacy & Security Office that a Breach has occurred:
            1. Contractor agrees that it shall be responsible for, including all costs with respect to, fulfilling the State’s and/or Contractor’s obligations for notice to all of the known and suspected victims of the Breach. Such notice shall comply with the HIPAA Breach Rule notification requirements and/or applicable notification requirements under State law.
            2. Contractor further agrees that such notification will be made under its name, unless otherwise specified by the FSSA Privacy & Security Office. Contractor will coordinate its Breach notification efforts with the FSSA Privacy & Security Office; the FSSA Privacy & Security Office will approve Contractor’s Breach notification procedures and plans, including the format and content of the notice(s) prior to such notification being made.
            3. Contractor accepts full responsibility for the Breach and any resulting losses or damages incurred by the State or any victim of the Breach.
            4. Contractor will undertake all commercially reasonable efforts necessary to mitigate any deleterious effects of the Breach for the known and suspected victims of the Breach.
            5. The State, through the FSSA Privacy & Security Office, will make the appropriate notifications to HHS and/or the applicable State agencies with respect to the Breach, unless the Contractor is directed to do so by the FSSA Privacy & Security Office.
         7. Contractor will undertake commercially reasonable corrective actions to eliminate or minimize to the greatest degree possible the opportunity for an identified Security Incident to reoccur and provide the FSSA Privacy & Security Office with its plans, status updates, and written certification of completion regarding such corrective actions.
14. Subcontractors. Contractor agrees that in accordance with the HIPAA Privacy Rule any subcontractors engaged by Contractor (in compliance with this Contract) that will create, receive, maintain, or transmit State PHI/PII on Contractor’s behalf will contractually agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such PHI/PII.
15. Access by Individuals to their PHI. Contractor acknowledges that in accordance with the HIPAA Privacy Rule individuals for whom Contractor has direct possession of their PHI on the State’s behalf have the right to inspect and amend their PHI, and have the right for an accounting of uses and disclosures of such PHI, except as otherwise provided therein. Contractor shall provide such right of inspection, amendment, and accounting of disclosures to such individuals upon reasonable request by the State (or by such individuals if the State directly refers such individuals to Contractor). In situations in which Contractor does not have direct possession of such PHI, then the State shall be responsible for such inspection, amendment, and accounting of disclosures rights by individuals.
16. Access to Records. Contractor shall make available to HHS and/or the State, Contractor’s internal practices, books, and records relating to the use and disclosure of PHI and PII provided to Contractor by the State or created, received, maintained, or transmitted by Contractor on the State’s behalf. Contractor shall promptly inform the State by giving notice to the FSSA Privacy & Security Office of any request by HHS (or its designee) for such internal practices, books, and/or records and shall provide the State with copies of any materials or other information made available to HHS.
17. Return of Protected Health Information. Upon request by the State or upon termination of this Contract, Contractor will, at the State’s sole option, either return or destroy all copies of any PHI or PII provided to Contractor by the State, including PHI or PII created, received, maintained, or transmitted by Contractor on the State’s behalf and Contractor shall warrant in writing that it has returned or destroyed such PHI and/or PII. Further, upon termination of this agreement Contractor will not retain any copies of any such PHI and PII and shall warrant same in writing.
18. At the sole discretion of the State, the State may terminate this Contract for Contractor’s material breach of this Section 12.
19. Contractor agrees to participate in a disaster recovery plan, as appropriate to the Contractor’s Services, as determined by the State to be necessary to uphold integral business functions in the event of an unforeseen disaster.
20. Drug and Alcohol Records. In the performance of the Services under this Contract, Contractor may have access to confidential information regarding alcohol and drug abuse patient records. Contractor agrees that such information is confidential and protected information and promises and assures that any such information, regardless of form, disclosed to Contractor for the purposes of this Contract will not be disclosed or discussed with others without the prior written consent of the State. The Contractor and the State will comply with the applicable requirements of 42 CFR Part 2 and any other applicable federal or state law or regulatory requirement concerning such information. The Contractor will report any unauthorized disclosures of such information in compliance with Section 12.F.
21. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract. The Contractor shall report any unauthorized disclosures of Social Security numbers to the FSSA Privacy & Security Office within one (1) business day of the date of discovery.

1. Contractor will indemnify and hold the State harmless from any loss, damage, costs, expense, judgment, sanction or liability, including, but not limited to, attorneys’ fees and costs, that the State incurs or is subject to, as a result of a breach of this Section by the Contractor or any subcontractor, agent or person under Contractor’s control. In the event a claim is made against the State for any such claim, cause of action, liability, damage, cost or expense, State may, at its sole option: (i) tender the defense to Contractor, who shall provide qualified and competent counsel to represent the State interest at Contractor’s expense; or (ii) undertake its own defense, utilizing such professionals as it deems reasonably necessary, holding Contractor responsible for all reasonable costs thereof. In any event, State shall have the sole right to control and approve any settlement or other compromise of any claim brought against it that is covered by this Section.
2. Contractor shall adhere to all relevant FSSA Application Security policies located at <http://in.gov/fssa/4979.htm> for any related activities provided to FSSA under this contract. Contractor is responsible for validating that any subcontractors they engage will also comply with these policies. Any exceptions to these policies require written approval from the FSSA Privacy & Security Office.

**13. Continuity of Services.**

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

**14. Debarment and Suspension.**

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State’s request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State**.

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

**16. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner’s decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner’s decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner’s decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

**17. Drug-Free Workplace Certification.**

As required byExecutive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of $25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor’s workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor’s policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
5. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Employment Eligibility Verification.**

As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien.  The Contractor further agrees that:

A.  The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B.  The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C.  The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**19. Employment Option**.

If the State determines that it would be in the State’s best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

**20. Force Majeure**.

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation**.

As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**22. Governing Law**.

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

**23. HIPAA Compliance.**

This information has been incorporated into Clause 12.

**24. Indemnification**.

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.

**25. Independent Contractor; Workers’ Compensation Insurance.**

The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers’ compensation insurance for the Contractor’s employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

**26. Information Technology Enterprise Architecture Requirements.**

If this Contract involves information technology-related products or services, the Contractor agrees that any such products or services are compatible with the technology standards, including the assistive technology standard, all found at <https://www.in.gov/iot/2394.htm>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the terms of this paragraph are breached.

**27. Insurance.**

A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor’s performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than $700,000 per person and $5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

3. Errors and Omissions liability with minimum liability limits of $1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.

4. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than $700,000 per cause of action and $5,000,000 in the aggregate.

6. Surety or Fidelity Bond(s) if required by statute or by the agency.

7. Cyber Liability if requested by the State addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than $700,000 per occurrence and $5,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers’ compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an “all states endorsement” covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B.  The Contractor’s insurance coverage must meet the following additional requirements:

1.  The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.

2.   Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3.   The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4.   The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days’ prior written notice to the undersigned State agency.

5.   The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C.  Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract.  The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

**28. Key Person(s)**.

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days’ prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**29. Licensing Standards**.

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**30. Merger & Modification**.

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

**31. Minority and Women’s Business Enterprises Compliance.**

Award of this Contract was based, in part, on the Minority and/or Women’s Business Enterprise (“MBE” and/or “WBE”) participation plan as detailed in the Minority and Women’s Business Enterprises Subcontractor Commitment Form, commonly referred to as “Attachment A” in the procurement documentation and incorporated by reference herein**.** Therefore, any changes to this information during the Contract term must be approved by MWBE Compliance and may require an amendment. It is the State’s expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following MBE/WBE Division (“Division”) certified MBE and/or WBE subcontractors will be participating in this Contract:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| MBE/WBE | PHONE | COMPANY NAME | SCOPE OF PRODUCTS and/or SERVICES | UTILIZATION DATE | PERCENT |
| None |  |  |  |  | 0.000 |

A copy of each subcontractor agreement must be submitted to the Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana’s subcontractor payment auditing system), emailed to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.

The Contractor’s failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**32. Nondiscrimination**.

Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable,theContractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

**33. Notice to Parties**.

Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. Notices to the Contractor shall be sent to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

**34. Order of Precedence; Incorporation by Reference.**

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP #\_\_\_\_\_, (4) Contractor’s response to RFP #\_\_\_\_\_, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

**35. Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the “Materials”) not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered “work for hire” and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor’s expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor’s work product during the term of this Contract.

**36. Payments**.

A.  All payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State.  No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

B. Claims shall be submitted for reimbursement in accordance with the specified Component Descriptions and Unit Descriptions defined on Attachment A and utilizing the State-generated FSSA Contract Claim Reimbursement Form. Costs are incurred on the date goods, services, and/or deliverables are satisfactorily provided in full and/or **after** a reimbursable expense has been paid. Reimbursement shall be based on actual goods, services and/or deliverables provided and/or actual reimbursable expenses previously paid. Claims shall be submitted to the State within sixty (60) calendar days following the end of the month in which goods, services or deliverable were provided and/or expenses were paid. The State has the discretion, and reserves the right, to **not pay** any claims submitted later than sixty (60) calendar days after the expiration of a specific Claim Program ID effective date or date of termination of this agreement. Payment for claims submitted after that time may, at the discretion of the State, be denied.

C. At the time that the final claim is submitted, all reconciliation issues must be resolved including the return of any incorrectly reimbursed monies or credits received for expenses previously reimbursed. Incorrectly reimbursed funds or credits received for expenses reimbursed will be returned immediately upon discovery as a direct payment, not credit, to the “State of Indiana.” Each return of funds will be accompanied with a completed FSSA Contract Claim Reimbursement Form identifying specific Components to be credited (negative) and each associated month reported on the original reimbursement request. Payments and FSSA Contract Claim Reimbursement Forms will be submitted to FSSA Administrative Services using the address provided on the reimbursement form.

D. Claims must be submitted with accompanying supportive documentation, as designated by the State. Incomplete claims submittedor claims submitted without supportive documentation will be returned to the Contractor and/or Grantee and not processed for payment. Failure tosuccessfully perform or execute the policies and/or provisions made in this contract may result in the denialand/or partial payment of claims submitted for reimbursement.

E. The State Budget Agency and the Contractor acknowledge that Contractor is being paid in advance for the maintenance of equipment and / or software.  Pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

**37. Penalties/Interest/Attorney’s Fees**.

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney’s fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State’s failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

**38. Progress Reports**.

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**39. Public Record.**

The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on the transparency portal as required by IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

**40. Renewal Option**.

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

**41. Severability**.

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**42. Substantial Performance.**

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**43. Taxes**.

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**44. Termination for Convenience**.

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

**45. Termination for Default.**

A. With the provision of thirty (30) days’ notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;

2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;

3. Make progress so as to endanger performance of this Contract; or

4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**46. Travel**.

No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency’s *Financial Management Circular – Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.

**47. Limitation of Liability.**

Except for personal injury (including death), physical property damage and infringement of third party proprietary rights caused by and attributable to the Contractor and/or an employee or agent of the Contractor, the Contractor's liability for damages to the State, regardless of the form of any claim or action, shall not exceed the amount to be paid Contractor over the full term of the Contract. The State agrees to act promptly (i.e. within one hundred twenty (120) days of receiving actual notice of a claim filed by State or by third party against State) in providing to the Contractor any notice of any claim hereunder. No action, regardless of form, arising out of the services under this contract may be brought unless prompt notice of the claim is provided to the Contractor as provided herein. The Contractor is not liable for incidental or consequential damages or for the loss of data or profits. An action upon the contract may be brought within the time period proscribed by Indiana law.

**48. Waiver of Rights**.

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State’s review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor’s negligent performance of any of the services furnished under this Contract.

**49. Work Standards**.

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**50. State Boilerplate Affirmation Clause**.

I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State’s standard contract clauses (as contained in the *2018* OAG/ IDOA *Professional Services Contract Manual* orthe *2018 SCM Template*) in any way except as follows:

Section 25, Indiana Veteran's Business Enterprise Compliance - deleted.

Section 47, Limitation of Liability – added.

Section 51, Federal Requirements Clauses – added.

2. Federal Requirements Clauses

The Contractor must comply with the following provisions:

1. Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60): The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

Contractor will compile data, maintain records, and submit reports as required to permit effective enforcement of nondiscrimination laws, regulations, policies, instructions, and guidelines. This agreement permits authorized USDA personnel to review such records, books, and accounts as needed during hours of program operation to ascertain compliance.

1. The Clean Air Act, Section 306:
2. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.
3. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).
4. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
5. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
6. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]
7. The Clean Water Act:

a. No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation’s water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:

(1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and

(2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

e. The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

f. (1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

(2) In paragraph (1), the term “commercial item” has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

1. The Anti-Lobbying Act: This Act prohibits the recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the applicant certifies that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Confess in connection with this federal grantor or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;

c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

1. Americans with Disabilities Act: This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments, except public transportation services.
2. Drug Free Workplace Statement: The Federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

a. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.

b. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.

c. Employees must notify their employer of anby conviction of a criminal drug statute no later than five days after such conviction.

d. Although alcohol is not a controlled substance, it is nonetheless a drug. It is the policy of the Indiana Family and Social Services Administration that abuse of this drug will also not be tolerated in the workplace.

e. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

1. Debarment, suspension, and other responsibility matters: As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110.

a. The applicant certifies that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(4) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

b. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

1. The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a contractor purchases ownership.
2. Prevention of Fraud and Abuse.

In accordance with 42 U.S.C. 1396a(a)(68), Contractor shall establish and disseminate, to its employees (including management), subcontractors, and agents, written policies that provide detailed information about federal and state False Claims Acts, whistleblower protections, and Contractor policies and procedures for preventing and detecting fraud and abuse. The written policies described in this paragraph may be on paper or in electric form and must be adopted by the subcontractors and agents of the Contractor. If Contractor maintains an employee handbook, the Contractor shall provide the described information specifically in the employee handbook.

In any inspection, review, or audit of the Contractor by (or at the behest of) the State or federal government, the Contractor shall provide upon request copies of its written policies regarding fraud, waste, and abuse. Contractor shall submit to OMPP a corrective action plan within sixty days (60) if the Contractor is found not to be in compliance with any part of the requirements stated in this paragraph. If Contractor is required to submit a corrective action plan and does not do so within sixty (60) days, the state may withhold payment to the Contractor until a corrective action plan is received.

1. Assurance of Compliance with Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 and Title IX of the Education Amendments of 1972.

The Contractor agrees that it, and all of its subcontractors and providers, will comply with the following:

1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.
2. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified handicapped individual in the United States shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.
3. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.
4. The Americans with Disabilities Act of 1990 (Pub. L. 101-336), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Justice (28 C.F.R. 35.101 et seq.), to the end that in accordance with the Act and Regulation, no person in the United States with a disability shall, on the basis of the disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.
5. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681, 1683, and 1685-1686), and all requirements imposed by or pursuant to regulation, to the end that, in accordance with the Amendments, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.

The Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal financial assistance, and that it is binding upon the Contractor, its successors, transferees and assignees for the period during which such assistance is provided. The Contractor further recognizes that the United States shall have the right to seek judicial enforcement of this assurance.

1. Conveyance of Documents and Continuation of Existing Activity.

Should the Contract for whatever reason, (i.e. completion of a contract with no renewal, or termination of service by either party), be discontinued and the activities as provided for in the Contract for services cease, the Contractor and any subcontractors employed by the terminating Contractor in the performance of the duties of the Contract shall promptly convey to the State of Indiana, copies of all vendor working papers, data collection forms, reports, charts, programs, cost records and all other material related to work performed on this Contract. The Contractor and the Office shall convene immediately upon notification of termination or non-renewal of the Contract to determine what work shall be suspended, what work shall be completed, and the time frame for completion and conveyance. The Office will then provide the Contractor with a written schedule of the completion and conveyance activities associated with termination. Documents/materials associated with suspended activities shall be conveyed by the Contractor to the State of Indiana upon five days' notice from the State of Indiana. Upon completion of those remaining activities noted on the written schedule, the Contractor shall also convey all documents and materials to the State of Indiana upon five days' notice from the State of Indiana.

1. Environmental Standards.

If the contract amount set forth in this Contract is in excess of $100,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 7606), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 C.F.R. Part 1532), which prohibit the use under non-exempt Federal contracts of facilities included on the EPA List of Violating Facilities. The Contractor shall report any violations of this paragraph to the State of Indiana and to the United States Environmental Protection Agency Assistant Administrator for Enforcement.

1. Lobbying Activities.

Pursuant to 31 U.S.C. § 1352, and any regulations promulgated thereunder, the Contractor hereby assures and certifies that no federally appropriated funds have been paid, or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative contract. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

1. Financial Disclosure.

The Contractor agrees that it has disclosed, and shall as necessary in the future disclose to the State the name and address of each person with an ownership or controlling interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership interest of 5 percent or more. If the Contractor is not subject to periodic survey under § 455.104(b)(2) it must disclose to the State, prior to enrolling, the name and address of each person with an ownership or controlling interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership interest of 5 percent or more. Additionally, under § 455.104(a)(2), the Contractor must disclose whether any of the named persons is related to another as spouse, parent, child, or sibling. Moreover, pursuant to the requirements of § 455.104(a)(3), the Contractor shall disclose the name of any other disclosing entity in which a person with an ownership or controlling interest in the disclosing entity has an ownership or controlling interest.

1. Non-Collusion and Acceptance
2. The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned’s knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof**. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**
3. **Agreement to Use Electronic Signatures**
4. I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana.  I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation.  I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein.  I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: <https://hr85.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST>
5. **In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

[Contractor] [Indiana Agency]

By: By:

Title: Title:

Date: Date:

|  |  |
| --- | --- |
| Electronically Approved by:  Department of Administration  By: (for)  Lesley A. Crane, Commissioner  *Refer to Electronic Approval History found after the final page of the Executed Contract for details.* |  |
| Electronically Approved by:  State Budget Agency  By: (for)  Jason D.Dudich, Director  *Refer to Electronic Approval History found after the final page of the Executed Contract for details.* | Electronically Approved as to Form and Legality:  Office of the Attorney General  By: (for)  Curtis T. Hill, Jr., Attorney General  *Refer to Electronic Approval History found after the final page of the Executed Contract for details.* |

**Exhibit 1 to the Master Agreement: Software-as-a-Service**

**1. Data Ownership:** The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity’s written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity’s use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

**2. Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:

a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.

b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.

c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.

d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.

e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.

f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

**3. Data Location:** The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

**4. Security Incident or Data Breach Notification:**

a. Incident Response: Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the Purchasing Entity should be handled on an urgent as-needed basis, as part of Contractor’s communication and mitigation processes as mutually agreed upon, defined by law or contained in the Master Agreement.

b. Security Incident Reporting Requirements: The Contractor shall report a security incident to the Purchasing Entity identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.

c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any purchasing entity’s content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

**5. Personal Data Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor.

a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a data breach is a direct result of Contractor’s breach of its contractual obligation to encrypt personal data or otherwise prevent its release as reasonably determined by the Purchasing Entity, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently $217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

**6. Notification of Legal Requests**: The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity’s data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.

**7. Termination and Suspension of Service**:

a. In the event of a termination of the Master Agreement or applicable Participating Addendum, the Contractor shall implement an orderly return of purchasing entity’s data in a CSV or another mutually agreeable format at a time agreed to by the parties or allow the Purchasing Entity to extract it’s data and the subsequent secure disposal of purchasing entity’s data.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity’s data.

c. In the event of termination of any services or agreement in entirety, the Contractor shall not take any action to intentionally erase purchasing entity’s data for a period of:

• 10 days after the effective date of termination, if the termination is in accordance with the contract period

• 30 days after the effective date of termination, if the termination is for convenience

• 60 days after the effective date of termination, if the termination is for cause

After such period, the Contractor shall have no obligation to maintain or provide any purchasing entity’s data and shall thereafter, unless legally prohibited, delete all purchasing entity’s data in its systems or otherwise in its possession or under its control.

d. The purchasing entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity’s data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.

**8. Background Checks:** Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity’s information among the Contractor’s employees and agents. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its’ sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

**9. Access to Security Logs and Reports:** The Contractor shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA agreed to by both the Contractor and the Purchasing Entity. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Master Agreement and applicable Participating Addendum.

**10. Contract Audit:** The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity’s expense.

**11. Data Center Audit**: The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The Contractor may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

**12. Change Control and Advance Notice:** The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service’s functionality, adversely affect Purchasing Entity’s use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.

Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.

**13. Security:** As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other’s roles and responsibilities.

**14. Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.

**15. Import and Export of Data:** The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor’s contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its’ own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

**16. Responsibilities and Uptime Guarantee**: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

**17. Subcontractor Disclosure**: Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

**18. Right to Remove Individuals:** The Purchasing Entity shall have the right at any time to require that the Contractor remove from interaction with Purchasing Entity any Contractor representative who the Purchasing Entity believes is detrimental to its working relationship with the Contractor. The Purchasing Entity shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the Purchasing Entity signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the Master Agreement or future work orders without the Purchasing Entity’s consent.

**19. Business Continuity and Disaster Recovery:** The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity’s recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

**20. Compliance with Accessibility Standards**: The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, or any other state laws or administrative regulations identified by the Participating Entity.

**21. Web Services:** The Contractor shall use Web services exclusively to interface with the Purchasing Entity’s data in near real time.

**22. Encryption of Data at Rest:** The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data, unless the Purchasing Entity approves in writing for the storage of Personal Data on a Contractor portable device in order to accomplish work as defined in the statement of work.

**23. Subscription Terms:** Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for SaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor’s documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.

**Exhibit 2 to the Master Agreement: Platform-as-a-Service**

**1. Data Ownership:** The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity’s written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity’s use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

**2. Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:

a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.

b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.

c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.

d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.

e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.

f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

**3. Data Location:** The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

**4. Security Incident or Data Breach Notification:** The Contractor shall inform the Purchasing Entity of any security incident or data breach within the possession and control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or SLA. Such notice shall include, to the best of Contractor’s knowledge at that time, the persons affected, their identities, and the Confidential Information and Data disclosed, or shall include if this information is unknown.

a. Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Master Agreement, Participating Addendum, or SLA. Discussing security incidents with the Purchasing Entity should be handled on an urgent as-needed basis, as part of Contractor’s communication and mitigation processes as mutually agreed, defined by law or contained in the Master Agreement, Participating Addendum, or SLA.

b. Security Incident Reporting Requirements: Unless otherwise stipulated, the Contractor shall immediately report a security incident related to its service under the Master Agreement, Participating Addendum, or SLA to the appropriate Purchasing Entity.

c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any Purchasing Entity data that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate Purchasing Entity within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner

**5. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor.

a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor’s breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently $217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

**6. Notification of Legal Requests**: The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity’s data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.

**7. Termination and Suspension of Service**:

a. In the event of an early termination of the Master Agreement, Participating or SLA, Contractor shall allow for the Purchasing Entity to retrieve its digital content and provide for the subsequent secure disposal of the Purchasing Entity’s digital content.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity’s data.

c. In the event of early termination of any Services or agreement in entirety, the Contractor shall not take any action to intentionally erase any Purchasing Entity’s data for a period of 1) 45 days after the effective date of termination, if the termination is for convenience; or 2) 60 days after the effective date of termination, if the termination is for cause. After such day period, the Contractor shall have no obligation to maintain or provide any Purchasing Entity data and shall thereafter, unless legally prohibited, delete all Purchasing Entity data in its systems or otherwise in its possession or under its control. In the event of either termination for cause, the Contractor will impose no fees for access and retrieval of digital content to the Purchasing Entity.

d. The Purchasing Entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity’s data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.

**8. Background Checks:**

a. Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity’s information among the Contractor’s employees and agents.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

c. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its’ sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

**9. Access to Security Logs and Reports:**

a. The Contractor shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA and agreed to by both the Contractor and the Purchasing Entity. Reports will include latency statistics, user access, user access IP address, user access history and security logs for all Purchasing Entity files related to the Master Agreement, Participating Addendum, or SLA.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

**10. Contract Audit:** The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity’s expense.

**11. Data Center Audit**: The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The Contractor may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

**12. Change Control and Advance Notice:** The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service’s functionality, adversely affect Purchasing Entity’s use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.

Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.

**13. Security:** As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other’s roles and responsibilities.

**14. Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.

**15. Import and Export of Data:** The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor’s contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its’ own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

**16. Responsibilities and Uptime Guarantee**: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

**17. Subcontractor Disclosure**: Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

**18. Business Continuity and Disaster Recovery:** The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity’s recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

**19. Compliance with Accessibility Standards**: The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973 or any other state laws or administrative regulations identified by the Participating Entity.

**20. Web Services:** The Contractor shall use Web services exclusively to interface with the Purchasing Entity’s data in near real time.

**21. Encryption of Data at Rest:** The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data as identified in the SLA, unless the Contractor presents a justifiable position that is approved by the Purchasing Entity that Personal Data, is required to be stored on a Contractor portable device in order to accomplish work as defined in the scope of work.

**22. Subscription Terms:** **Subscription Terms:** Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for PaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor’s documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.

**Exhibit 3 to the Master Agreement: Infrastructure-as-a-Service**

**1. Data Ownership:** The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity’s written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity’s use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

**2. Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:

a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.

b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.

c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.

d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.

e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.

f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

**3. Data Location:** The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

**4. Security Incident or Data Breach Notification:** The Contractor shall inform the Purchasing Entity of any security incident or data breach related to Purchasing Entity’s Data within the possession or control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or SLA. Such notice shall include, to the best of Contractor’s knowledge at that time, the persons affected, their identities, and the Confidential Information and Data disclosed, or shall include if this information is unknown.

a. Security Incident Reporting Requirements: The Contractor shall report a security incident to the Purchasing Entity identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.

b. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any purchasing entity’s content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

**5. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or SLA.

a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor’s breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently $217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

**6. Notification of Legal Requests**: The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity’s data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.

**7. Termination and Suspension of Service**:

a. In the event of an early termination of the Master Agreement, Participating or SLA, Contractor shall allow for the Purchasing Entity to retrieve its digital content and provide for the subsequent secure disposal of the Purchasing Entity’s digital content.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity’s data.

c. In the event of early termination of any Services or agreement in entirety, the Contractor shall not take any action to intentionally erase any Purchasing Entity’s data for a period of 1) 45 days after the effective date of termination, if the termination is for convenience; or 2) 60 days after the effective date of termination, if the termination is for cause. After such day period, the Contractor shall have no obligation to maintain or provide any Purchasing Entity data and shall thereafter, unless legally prohibited, delete all Purchasing Entity data in its systems or otherwise in its possession or under its control. In the event of either termination for cause, the Contractor will impose no fees for access and retrieval of digital content to the Purchasing Entity.

d. The Purchasing Entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity’s data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.

**8. Background Checks:**

a. Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity’s information among the Contractor’s employees and agents.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

c. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its’ sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

**9. Access to Security Logs and Reports:**

a. The Contractor shall provide reports on a schedule specified in the SLA to the Contractor directly related to the infrastructure that the Contractor controls upon which the Purchasing Entity’s account resides. Unless otherwise agreed to in the SLA, the Contractor shall provide the public jurisdiction a history or all API calls for the Purchasing Entity account that includes the identity of the API caller, the time of the API call, the source IP address of the API caller, the request parameters and the response elements returned by the Contractor. The report will be sufficient to enable the Purchasing Entity to perform security analysis, resource change tracking and compliance auditing

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

**10. Contract Audit:** The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity’s expense.

**11. Data Center Audit**: The Contractor shall perform an independent audit of its data centers at least annually and at its own expense, and provide an unredacted version of the audit report upon request. The Contractor may remove its proprietary information from the unredacted version. For example, a Service Organization Control (SOC) 2 audit report would be sufficient.

**12. Change Control and Advance Notice:** The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service’s functionality, adversely affect Purchasing Entity’s use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.

Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.

**13. Security:** As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other’s roles and responsibilities.

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**15. Import and Export of Data:** The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor’s contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its’ own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

**16. Responsibilities and Uptime Guarantee**: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

**17. Subcontractor Disclosure**: Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

**18. Business Continuity and Disaster Recovery:** The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity’s recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

19. **Subscription Terms:** Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for IaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor’s documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.