General Services Administration
Federal Acquisition Service

Authorized Information Technology Schedule Pricelist
Federal Supply Schedule 70 - General Purpose Commercial Information Technology
Equipment, Software, and Services

Wolters Kluwer Financial Services
130 Turner Street Building 3, 4th Floor
Waltham, MA 02453
United States
Telephone: (781) 663-5409
Fax: (781) 663-5335
www.wolterskluwer.com

Contract Number: 47QTCA18D00FE
Special Item Number: 511210

Wolters Kluwer Financial Services, Inc
130 Turner Street Building 3, 4th Floor
Waltham, MA 02453
United States
Telephone: (781) 663-5409
Fax: (781) 663-5335
www.wolterskluwer.com

Contract Period: June 29th, 2018 – June 29th, 2023
Business Size/Status: Large Business
Prices shown herein are NET (discount deducted).

Pricelist current through modification # 47QTCA18D00FE dated 06/29/2018

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA-Advantage™, a menu-driven database system. The Internet address for GSA-Advantage™ is: http://www.gsaadvantage.gov

For more information on ordering from Federal Supply Schedules click here: http://www.gsa.gov/eligibilitytouse
State & Local Purchasing Programs

COOP PURCH Section 211 of the E-Government Act of 2002 (the Act) amended the Federal Property and Administrative Services Act to allow for "Cooperative Purchasing." Cooperative Purchasing allows for the Administrator of General Services to provide states and localities access to certain items offered through the General Services Administration’s (GSA’s) Federal Supply Schedule 70, Information Technology (IT) Schedule contract. The information technology available to state and local governments includes automated data processing equipment (including firmware), software, supplies, support equipment, and services.

DISAST RECOV Disaster Recovery Purchasing Program (RC) Section 833 of the National Defense Authorization Act allows state and local governments to purchase products and services to facilitate recovery from a major disaster. This includes advance and pre-positioning in preparation for a disaster.

Federal Grants During Public Health Emergencies Section 319 of Public Health and Services Act
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ARTICLE II. GENERAL CONTRACT INFORMATION

1a. Table of Awarded Special Item Numbers (SINs):
   Please refer to GSA eLibrary (www.gsaelibrary.gsa.gov) for detailed SIN descriptions

511210: Software Licenses - Includes both term and perpetual software licenses and maintenance.

1b. Lowest Priced Model Number and Lowest Price:
   Please refer to our rates on page #Error! Bookmark not defined.

1c. Labor Category Descriptions:
   N/A

2. Maximum Order: $500,000

3. Minimum Order: $100

4. Geographic Coverage: Domestic Only

5. Point(s) of Production: Same as Company Address

6. Discount from List Price: All Prices Herein are Net

7. Quantity Discounts:
   CRA Wiz and Fair Lending Wiz Products:
   • Additional 10% (60% off Commercial Pricing) discount for GSA customers who purchase 10+ copies
   • Additional 15% (65% off Commercial Pricing) discount for GSA customers who purchase 25+ copies

8. Prompt Payment Terms:
   Net 30 days / Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions

9a. Government Purchase Card is accepted at or below the micro – purchase threshold.

9b. Government Purchase Card is not accepted above the micro – purchase threshold.

10. Foreign Items: None

11a. Time of Delivery: 30 Days ARO

11b. Expedited Delivery: 15 Days ARO

11c. Overnight and 2-Day Delivery: To Be Negotiated with Ordering Agency

11d. Urgent Requirement: To Be Negotiated with Ordering Agency

12. F.O.B. Point(s): Destination

13a. Ordering Address:
   Wolters Kluwer Financial Services, Inc
   Attn: Sara Hill/GSA Orders
Ordering procedures:
Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.
   a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
   b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.
   c. FAR 8.405-3 Blanket purchase agreements (BPAs)
The ordering procedures and additional information can be found at [www.gsa.gov/eligibilitytouse](http://www.gsa.gov/eligibilitytouse).

14. Payment Address:
Wolters Kluwer Financial Services, Inc
Attn: Sara Hill/GSA Orders
130 Turner Street Bldg 3, 4th Floor
Waltham, MA 02453
United States

15. Warranty Provision:
See EULA

16. Export Packing Charges:
Not Applicable

17. Terms & Conditions of Government Purchase Card Acceptance (any thresholds above the micro-purchase level):
Contact Contract Administrator

18. Terms and conditions of rental, maintenance, and repair:
Not Applicable

19. Terms and conditions of installation (if applicable):
Not Applicable

20. Terms and conditions of repair parts indicating date of parts, price lists and any discounts from list prices:
Not Applicable

20a. Terms and conditions for any other services (if applicable):
Not Applicable

21. List of service and distribution points (if applicable):
Not Applicable

22. List of participating dealers (if applicable):
Not Applicable

23. Preventative maintenance (if applicable):
Not Applicable

24a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants.):
Not Applicable

24b. Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor’s website or other location.) The EIT standards can be found at: [www.Section508.gov](http://www.Section508.gov):
Contact Contract Administrator for more information.
25. Data Universal Number System (DUNS) Number: 884721879

26. Wolters Kluwer Financial Services, Inc is registered in the System for Award Management (SAM).
Article III. TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210)

2.1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2.2. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)

The contractor shall provide all Enterprise User License Agreements in an editable Microsoft Office (Word) format.

2.3. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the Contractor’s standard commercial guarantee/warranty as stated in the contract’s commercial pricelist will apply to this contract.

Please refer to the Wolter’s Kluwer Financial Services, Inc., End User License Agreement and Software Maintenance Terms and Conditions included at the end of this pricelist for details on warranty.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. If no implied warranties are given, an express warranty of at least 60 days must be given in accordance with FAR 12.404(b)(2).

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

2.4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number (888) 435-7439 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 6:00am Central to 6:00pm Central, Monday-Friday.

2.5. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined: (select software maintenance type):

☑ 1. Software Maintenance as a Product (SIN 511210)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user’s self-diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

☐ 2. Software Maintenance as a Service (SIN 132-34)
Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

2.6. PERIODS OF MAINTENANCE (SIN 132-34)

a. The Contractor shall honor orders for periods for the duration of the contract period or a lessor period of time.

b. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. Funding for the perpetual license shall use funds appropriated for such purpose in the government fiscal year of the acquisition of the license. When annually appropriated funds are cited on an order for maintenance, the period of the maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity’s specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the maintenance is to be terminated at that time. Orders for the continuation of maintenance will be required if the maintenance is to be continued during the subsequent period.

2.7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE (Not Applicable)

a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.

c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.

d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to N/A% of all term license payments during the period that the software was under a term license within the ordering activity.

2.8. TERM LICENSE CESSATION (Not Applicable)
a. After a software product has been on a continuous term license for a period of N/A months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number l32-34, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

2.9. UTILIZATION LIMITATIONS - (SIN 511210)

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

   (1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

   (2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

   (3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

   (4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
"Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

2.10. SOFTWARE CONVERSIONS - (SIN 511210)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (511210), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version.

2.11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

2.12. RIGHT-TO-COPY PRICING

Article IV. Not available.

    ARTICLE V.
    ARTICLE VI.
### ARTICLE VII. PRODUCT PRICING
SIN (511210)

<table>
<thead>
<tr>
<th>PRODUCT NAME</th>
<th>PRODUCT DESCRIPTION</th>
<th>GSA OFFER PRICE (inclusive of the .75% IFF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CRA Wiz - Complete</td>
<td>The Wiz™ software is a single integrated application which performs the following functions in the context of lending portfolio analysis: geocoding (determination of latitude/longitudes from address information), database analysis (standard and customized tables and graphs w/ a variety of filtering options which allow lending institutions to analyze their loan portfolios) and mapping (display of lending portfolio information in map form based upon data sets defined in the database analysis function). The software aids the lending industry in its compliance with the Community Reinvestment Act and Fair Lending laws and regulations. The software tool is sold with a number of options, such as breadth of geography covered and accompanying data sets, all of which are specified by the purchaser.</td>
<td>$23,894.21</td>
</tr>
<tr>
<td>Fair Lending Wiz</td>
<td>Fair Lending WizTM—the Fair Lending WizTM program performs regression and comparative file analyses on loan portfolios, including HMDA-reportable credits, for both decisioning and pricing reviews as part of a fair lending program. This package quickly and efficiently pinpoints marginal applicants that may have fair lending issues. Rather than creating an electronic version of the paper examiner worksheets typically employed in comparative file reviews, Fair Lending WizTM instead utilizes sophisticated statistical methods to quickly determine marginal applicants and/or file comparators. Fair Lending WizTM has the capability to efficiently evaluate disparate treatment, disparate impact, and redlining issues. More specifically it helps in reviewing typical loan portfolios, as well as, have the ability to focus in on brokered loans, risk rated loans (A,B,C paper), overages/underages, and credit scored loans and models. Modules for consumer and small business lending are currently being developed. Fair Lending WizTM is a flexible compliance tool that allows users to tailor examinations or inquiries to firm-specific or product-specific use. In addition to the standard formats, reports and models made available in Fair Lending WizTM, custom formats, reports regression models and comparative file review processes can be created. These custom formats, reports, models, etc. are stored and may be used later with other products or institutions, as appropriate. These formats can also be exchanged between computers/users. Costly customization and/or tailoring of a specific data format, method or model is therefore unnecessary.</td>
<td>$31,433.25</td>
</tr>
<tr>
<td>Flood Wiz</td>
<td>The Government clients will be assigned dedicated map analysts depending on the volume of requests being processed. The team is available to answer any questions and process requests 8AM –8PM EST, Monday through Friday. The specially assigned analysts will be in regular contact with the processors when further information is necessary for a determination. We guarantee that a phone call will be made within one working day if a determination requires further documentation. All technical support and training is provided free of charge to all clients.</td>
<td>$7.30</td>
</tr>
</tbody>
</table>
GSA NEGOTIATED END-USER LICENSE AGREEMENT FOR SIN 511210

MASTER LICENSE AND SERVICES AGREEMENT

This MASTER LICENSE AND SERVICES AGREEMENT is entered into between WOLTERS KLUWER FINANCIAL SERVICES, INC., 6815 Saukview Drive, St. Cloud MN 56303 ("WKFS"), and the following entity:

Customer Information:

Customer Legal Name: 
Address for Notices: 
Attn: 

A. Master Agreement. This is a master agreement which governs licenses of products and procurement of services by Customer and its Affiliates, if permitted, from WKFS and its Affiliates. For purposes of this Agreement, “Affiliates” refers collectively to the corporations or other entities controlling, controlled by or under common control with the referenced party. The parties and/or their Affiliates will document future Customer purchases by executing Schedules, Statements of Work and/or Orders (all as hereinafter defined) which reference this Agreement. If a Schedule is executed by an Affiliate of Customer, said Affiliate will be deemed the “Customer” under this Agreement for purposes of that Schedule; provided, however that Customer shall not be relieved of any obligations or liability pursuant to this Agreement. If a Schedule is executed by an Affiliate of WKFS, said Affiliate will be considered “WKFS” under this Agreement for purposes of that Schedule. All Schedules, Statements of Work and Orders are incorporated by reference into this Agreement. This Master License and Services Agreement, together with all Schedules, Statements of Work and Orders may be referred to herein as the “Agreement.”

B. General Terms and Conditions. Attached as part of this Agreement are the general terms and conditions that address the overall contract relationship between WKFS and Customer. The terms and conditions are incorporated herein by reference and shall apply to all WKFS Deliverables (as hereinafter defined) delivered pursuant to this Agreement. If any provision of any Schedule, Statement of Work or Order conflicts with any provision of this Agreement, the terms and provisions of the Schedule, Statement of Work or Order shall control.

C. No Substitute for Legal Counsel. WOLTERS KLUWER FINANCIAL SERVICES’ PRODUCTS AND SERVICES ARE NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. WKFS and its employees, officers and agents are not authorized to practice law or provide tax, accounting, legal, regulatory or investment advice, and WKFS will have no liability of any nature whatsoever, directly or indirectly, to Customer or any of Customer’s employees, agents, Affiliates, customers or clients regarding any tax, accounting, legal, regulatory or investment matters. Before using any WKFS Deliverable, Customer is advised to have its attorney review it to determine its legal sufficiency for Customer. The foregoing notice is required by law.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date indicated below.

WOLTERS KLUWER FINANCIAL SERVICES, INC. 

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________

CUSTOMER: ____________________

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________
WKFS and Customer hereby agree as follows:

1. **Term.** The Effective Date of this Agreement is the date WKFS countersigns this Agreement. This Agreement shall continue thereafter until terminated as specified in Section 10.

2. **Products and Services.**
   (a) **Products and Services Generally.** Subject to payment of applicable Fees (as hereinafter defined), WKFS agrees to provide Customer the services and/or products (collectively, “WKFS Deliverable(s)”) as set forth in a schedule referencing the Agreement and duly executed by the parties (a “Schedule”). WKFS Deliverables include accompanying technical specifications and/or user materials, if any (“Documentation”), and consist of one or more of the following:
      i) **Licensed Content.** “Licensed Content” is (A) documents or forms, including (1) content, graphics, all aspects of presentation (including, but not limited to, type size, artwork, text boxes and formatting), and (2) all functional aspects of the content and presentation (including, but not limited to, location of content and completion fields, types of data required for completing fields, field names and other electronic tags or markers, merge engines and viewers), and (B) all other WKFS content, in any format or media, that is contained within the WKFS Deliverables.
      ii) **Software.** “Software” is software provided by WKFS in object code form only unless otherwise specifically provided in a Schedule.
      iii) **Online Services.** “Online Services” are services or Software provided by means of internet-based access.
      iv) **Professional Services.** “Professional Services” are professional or consulting services provided by WKFS, its Affiliate(s) and/or subcontractors, including training, implementation, set-up, customization and configuration services. Professional Services and the related Fees shall be described in a Schedule or a statement of work between the parties describing the Professional Services to be rendered (a “Statement of Work”).
   v) **Support.**
      (A) Definitions.
         (1) “Support” means technical support and maintenance services for a WKFS Deliverable delivered pursuant to a WKFS support and maintenance plan or as set forth on WKFS’ support line, currently: http://support.wolterskluwerfs.com (each, a “Support Plan”) for which Customer has paid the applicable Fees. Support includes (a) telephone help desk and electronic and/or remote access support to trouble-shoot and assist Customer in its use of the WKFS Deliverables and to respond to any reported failures of the WKFS Deliverables to conform with the applicable Documentation (provided that Support shall not include training with respect to the WKFS Deliverable, for which there are Professional Services Fees (as hereinafter defined)); (b) provision of Updates and Versions (as hereinafter defined) as WKFS from time to time produces and distributes generally to its customers under Support for no additional fees; and (c) such other support services as WKFS provides generally to customers as part of its then-current Support Plans. Support does not include onsite services or Professional Services related to installation and/or configuration of Updates or Versions. Updates and Versions delivered pursuant to Support shall be subject to the terms and conditions of this Agreement.
         (2) **Updates.** “Update” means any update, enhancement, improvement, correction, hotfix, service pack or other modification of or to the Software that is released by WKFS for general distribution to its customers as part of Support. Updates are not new Versions or New Releases (as hereinafter defined). An Update is generally denoted by a change to the right of the decimal point in the Software version number (for example, Version 1.0 to 1.1, or Version 1.0.1 to 1.0.2).
         (3) **Versions.** “Version” means any new version or upgrade of the Software that contains substantial and significant enhancement or other substantial changes in functionality or performance as compared to the previous version, if any. Versions are not Updates or New Releases. Versions are sometimes referred to in Schedules as “Upgrades”. A Version is generally denoted by a change to the left of the decimal point in the Software version number (for example, Version 8.0 and 9.0).
         (4) **New Releases.** Substantial performance and/or new functionality to Software may be deemed a new release by WKFS and not a Version (a “New Release”). New Releases are not released or delivered pursuant to Support.
      (B) Availability – Online Services. Unless otherwise stated in the applicable Support Plan or availability policy, Online Services are available 24x7 except as follows: (i) during maintenance procedures or upgrades to the Online Service, which shall utilize procedures designed to minimize the impact on Customer; or (ii) during malfunctions to the Online Service due to causes beyond the control of WKFS, including the interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion. WKFS will use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Online Services and WKFS will provide Customer with prompt notice of any malfunctions that materially affect the Online Service and efforts WKFS is making to cure said malfunctions.
      (C) Sunsetting: Discontinuance of WKFS Deliverables. Unless otherwise stated in the applicable Support Plan, WKFS may discontinue offering or supporting any of the WKFS Deliverables at any time. WKFS will provide notice to Customer on the earlier of: (i) one hundred twenty (120) days prior to discontinuance; or (ii) if the discontinuance is based upon a legal claim or change in law or regulation, a reasonable time prior to discontinuance. In the event of discontinuance of a WKFS
Deliverable, the applicable Schedule shall terminate as of the effective date of discontinuance and WKFS shall refund to Customer any prepaid but unapplied Fees related to the WKFS Deliverable as of such date.

(b) Schedules. Each executed Schedule will include the details of the particular WKFS Deliverable, including (i) whether the WKFS Deliverable is Software, Online Services and/or Licensed Content; (ii) the license or subscription term; (iii) a description of the applicable license model; (iv) the applicable Fees; and (v) any other applicable additional terms. Customer may purchase additional licenses for WKFS Deliverables from time to time by executing additional Schedule(s) or order(s) referencing the original Schedule (each, an “Order”).

(c) Delivery. WKFS will use commercially reasonable means to deliver the WKFS Deliverable to Customer. Delivery may be accomplished by U.S. mail, common carrier or by electronic transmission or electronic software delivery.

3. Fees for WKFS Deliverables.

(a) General. Customer agrees to pay WKFS, as applicable:
   i) Fees ("Fees") for WKFS Deliverables as specified in the applicable Schedule, Order or Statement of Work, in accordance with the applicable invoice. Except as otherwise stated herein, all Fees paid are non-refundable. Fees include the following fees:
      (A) License Fees – “License Fees” are fees for the license of the WKFS Deliverable on a term or perpetual basis. All License Fees are payable in advance as of the effective date of the license unless otherwise stated in the applicable Schedule or Order.
      (B) Maintenance Fees – “Maintenance Fees” are the annual fee for Support of the particular WKFS Deliverable. All Maintenance Fees are payable annually in advance unless otherwise stated in the applicable Schedule or Order. Maintenance Fees do not include Professional Services Fees, including without limitation Professional Services Fees related to the installation or configuration of Updates and Versions.
      (C) Ongoing Fees – “Ongoing Fees” are annual mandatory subscription fees that Customer pays to continue using the WKFS Deliverable and receive Support. Unless provided for otherwise in a Schedule or Order Form, the Ongoing Fees include License Fees and Maintenance Fees. All Ongoing Fees are payable annually in advance unless otherwise stated in the applicable Schedule or Order.
      (D) Hosting Fees – “Hosting Fees” are annual fees for providing Online Services, if applicable. All Hosting Fees are payable annually in advance, unless otherwise stated in the applicable Schedule or Order.
      (E) Administrative Fees - “Administrative Fees” are charges for administrative costs, if any, related to a WKFS Deliverable. Administrative Fees are payable annually in advance, unless otherwise stated in the applicable Schedule or Order.
      (F) Professional Services Fees – “Professional Services Fees” are fees that Customer pays for Professional Services and may include time and material rates or fixed fees, as described in the applicable Statement of Work, Schedule or Order. All Professional Services Fees invoiced on a time and materials basis are payable monthly in arrears, unless otherwise stated in the applicable Statement of Work, Schedule or Order. All fixed fees are payable in advance unless otherwise stated in the applicable Statement of Work, Schedule or Order. Estimates of Professional Services Fees are provided for Customer’s information only and are not guaranteed.
   ii) Reasonable and itemized out-of-pocket expenses and other third-party charges incurred by WKFS for the account of or on behalf of Customer and included in the applicable invoice ("Expenses"). All Fees exclude Expenses unless otherwise expressly stated in the applicable Schedule, Order, Statement of Work or invoice; and
   iii) All Taxes (as hereinafter defined). “Taxes” include any sales, use, excise, value added, and other taxes and duties however designated that are applicable to Customer, levied by any taxing authority relating to the WKFS Deliverables, and included in the applicable invoice. Taxes do not include taxes based on WKFS’ net income. All Fees exclude Taxes unless otherwise expressly stated in the applicable Schedule, Order, Statement of Work or invoice.
   iv) WKFS reserves the right to impose applicable price increases for all WKFS Deliverables. Customer may be required to pay additional fees if Customer experiences increase in its asset size, whether because of merger, acquisition, the purchase of assets, the assumption of liabilities or otherwise.

(b) Payment Terms. All Fees, Expenses and Taxes are due and payable within thirty (30) days of the applicable WKFS invoice date. Late payments are subject to a late charge equal to 1.5% of the outstanding amount commencing as of the invoice due date. Invoices may be issued by, and shall be payable to, a WKFS Affiliate. Customer agrees that it shall neither make nor assert any right of deduction or set-off on invoices for WKFS Deliverables. WKFS may request payment in advance or a deposit prior to providing a WKFS Deliverable.

4. Grant of License, Restrictions on Use of WKFS Deliverables.

(a) Grant of License. WKFS grants to Customer a non-exclusive, non-transferable, terminable license during the term indicated in the applicable Schedule or Order to use the WKFS Deliverables solely within the United States (unless otherwise stated in the applicable Schedule), for Customer’s internal use only by Customer employees and dedicated authorized independent contractors who are engaged solely by Customer in accordance with the Documentation and subject to the terms of this Agreement and the applicable Schedule(s). Additional license rights, if any, may be set forth in the applicable Schedule or Order. The license granted does not include the right to use WKFS Deliverables by Customer Affiliates, service providers, customers or other agents or contractors (collectively, “Outside Parties”) unless (i) explicitly granted in the applicable Schedule or Order, (ii) each of the Outside Parties is bound in writing by Customer to the terms and conditions of this Agreement and (iii) applicable fees, if any, are paid. Additional license terms pertaining to the Outside Parties may be set forth in the applicable Schedule(s) or Order(s). If Outside Parties are permitted, Outside Parties users shall be counted toward user counts, if applicable. Customer shall be responsible for and shall defend, indemnify and hold WKFS harmless for all acts and omissions of any Outside Party.
(b) **Retention of Rights.** Except for the license rights for WKFS Deliverables expressly granted pursuant to this Agreement, WKFS, on behalf of itself, its Affiliates, licensors and suppliers, reserves all rights not expressly granted to Customer pursuant to this Agreement, and retains all right, title and interest in and to: (i) the WKFS Deliverables, (ii) any copyright, patent, trade secret, trademark, invention or other intellectual property rights contained therein or related thereto (collectively, "Intellectual Property Rights"), and (iii) any modifications, adaptions, enhancements, translations or customizations thereof or improvements thereon, whether or not developed by or for or delivered to the Customer in connection with or as a result of Professional Services. In providing any customized report template or other customized work product deliverables in connection with its provision of Professional Services or Support hereunder, WKFS does not and shall not be deemed to transfer to Customer any Intellectual Property Rights therein, whether as “work-for-hire” or otherwise, other than the license to the same in accordance with the applicable Schedule or Order as part of the WKFS Deliverable(s). Subject to the foregoing, nothing in this Agreement shall be construed as granting WKFS any right, title or interest in or to any Customer-provided data (including Personal Information, as hereinafter defined) or other content or information input into or processed using the WKFS Deliverables, or reports generated therefrom.

(e) **Restrictions on Use of WKFS Deliverables.** Except as may be otherwise specifically provided in the applicable Schedule or Order, Customer may not: (i) copy, reproduce, or store in paper, electronic or other media any WKFS Deliverable (or any part of them) except that Customer may make a reasonable number of copies for archival purposes or to satisfy regulatory requirements to which Customer is subject; (ii) modify any WKFS Deliverable except for the data fields or prompts designed for input of data; (iii) decompile or reverse engineer any WKFS Deliverable (to the extent such restriction is not prohibited by applicable mandatory law) or create any derivative works from any WKFS Deliverable; (iv) sublicense, outsource, distribute, re-sell, lease, rent, or encumber any WKFS Deliverable; (v) provide data processing, document preparation, time sharing, subscription, hosting, facility management services, service bureau, training, consulting or other commercial services with respect to the WKFS Deliverables to people or entities who are not party to the applicable Schedule; (vi) use any unaccepted WKFS Deliverable or WKFS Deliverable licensed on an evaluation basis in a production or other non-testing environment; (vii) make any WKFS Deliverable publicly available through a web site or other means; (viii) provide or publish benchmark reviews for any WKFS Deliverable; (ix) display or allow access to or use of any WKFS Deliverable by persons, entities or at facilities other than those authorized under a Schedule or Order; (x) use any WKFS Deliverable in a way that would violate a law or regulation or contrary to its described or intended use; or (xi) remove any WKFS, WKFS Affiliate or WKFS supplier copyright, patent or trademark notices from any WKFS Deliverable, and Customer shall include any such notices in any reproductions or modifications of WKFS Deliverables or materials if and to the extent permitted by this Agreement or applicable Schedule. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT WKFS DELIVERABLES LICENSED ON A TERM OR EVALUATION BASIS MAY CONTAIN A DISABLING DEVICE THAT WILL AUTOMATICALLY DISABLE THE WKFS DELIVERABLE OR ACCESS THERETO AT THE END OF THE LICENSED OR EVALUATION PERIOD, UNLESS SUCH PERIOD IS EXTENDED OR RENEWED.

(d) **Access Controls.** Use of WKFS Deliverables is subject to WKFS operating rules and security controls, including data security, user ids and password requirements. WKFS may monitor Customer’s use of Online Services to verify compliance with this Agreement and WKFS operating rules. The access controls are intended to protect WKFS proprietary works and intellectual property and comply with applicable laws and security policies. Customer is responsible for maintaining the confidentiality of such controls. Customer’s violation of any access controls is a material breach of this Agreement, and WKFS may, in addition to any other legal remedy available, immediately cease providing any or all WKFS Deliverables until Customer has corrected the misuse to the reasonable satisfaction of WKFS.

(e) **Third Party Software and Services.** In connection with Customer’s use of the WKFS Deliverable, WKFS may make available to Customer certain third party software and/or services. Use of third party software or services, maintenance of the third party software and/or support thereof may be conditioned upon Customer’s agreement to third party terms in a Schedule or Order or execution of a direct agreement with the third party, which agreement may entitle such third party software or provider of services, as the case may be, and/or WKFS to enforce the terms of such agreement against Customer. If there are such terms or a third party agreement, then Customer’s use of the third party software and/or services shall be subject to such applicable terms. Support of third party products and services may be provided by the third party, and WKFS’ only obligation with respect to third party software or services is to inform the third party of any error in the third party software program or deficiency in services, as the case may be, of which Customer makes WKFS aware.

(f) **Technical Data.** Customer shall be solely responsible for identifying and complying with all laws applicable to the Customer regarding the use of the WKFS Deliverables and any technical data supplied by Customer. The WKFS Deliverables, including technical data, are subject to U.S. export control laws, including, without limitation, the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer shall not directly or indirectly export or re-export the WKFS Deliverables, or any direct product thereof. Customer agrees to comply strictly with all regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export or import the WKFS Deliverables. Software may not be downloaded, or otherwise exported or re-exported (i) into, or to a national or resident of, Cuba, Iran, North Korea, Sudan, Syria, or any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nations or the U.S. Commerce Department’s Table of Denial Orders as amended from time to time. Customer agrees to obtain all necessary licenses, permits or approvals required by any government at Customer’s sole cost and expense. Customer’s obligations under this Section 4(f) shall survive termination or expiration of this Agreement.

(g) **US Government.** If a WKFS Deliverable is being acquired by, on behalf of or use by the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government’s rights in the WKFS Deliverable will be
5. Customer Obligations.

(a) Configuration and Implementation. The WKFS Deliverables are designed to operate only in the software and hardware configurations identified in the applicable Documentation or, if applicable, on WKFS’ support line, currently http://support.wolterskluwerfs.com, as they may be revised from time to time. Customer will provide and maintain, at its own expense, all hardware, software, equipment, peripheral access devices, communication lines, internet access, telecom equipment and print and display devices required to access and/or use the WKFS Deliverables. WKFS shall have no obligation to maintain the software of others, including network software and/or interfaces.

(b) Data Input and Integrity. Customer shall be solely responsible for the verification, quality, input and transmission of its data required in connection with any WKFS Deliverable. The data shall be delivered in a format and manner set forth in the Documentation or otherwise approved or directed by WKFS. Customer shall determine the selection and use of its information in connection with the WKFS Deliverables and be responsible for the authenticity and accuracy of all information and data submitted to WKFS. Customer shall maintain backup data necessary to replace any critical data of Customer.

(c) Customer Personnel. Customer shall designate appropriate Customer personnel for the management of Customer’s use of the WKFS Deliverables and assign user ids if applicable. Training for the WKFS Deliverables, if necessary, is available as Professional Services from WKFS. Customer shall be responsible for training or obtaining training for its users and ensuring that any persons authorized to use the WKFS Deliverables are trained in the proper use of the WKFS Deliverables, and that the WKFS Deliverables are used in accordance with the Documentation and this Agreement. For Support, Customer shall: (i) designate appropriate Customer personnel to serve as the primary contacts with WKFS; (ii) cooperate with WKFS in investigating and seeking to identify the cause of any claimed failure of a WKFS Deliverable to perform in accordance with this Agreement; (iii) allow remote and/or on-site access to the WKFS Deliverable and to Customer’s systems as may be reasonable requested for WKFS to perform Support activities; (iv) install all Software Updates and/or Versions within twelve (12) months of release. Customer acknowledges that the failure to install any such Updates and/or Versions shall excuse WKFS’ indemnity provisions herein, if and to the extent any performance or infringement issues thereby would have been avoided or mitigated by Customer’s installation of such Updates and/or Versions.

(d) Access and Cooperation. If necessary for the implementation or provision of any WKFS Deliverables, Customer will provide WKFS with reasonable access to Customer’s facilities, equipment and personnel during normal business hours and provide WKFS with reasonable cooperation. Customer shall provide all information reasonably requested by WKFS, including completing any required usage certificates.

(e) Records and Audits. Customer shall, at its expense, create and maintain all records and information reasonably necessary to comply and to evidence compliance with this Agreement. Customer will permit WKFS to use reasonable means to audit Customer’s use of the WKFS Deliverables, including the use of physical inspections, network tests and inspections, and auditing or electronic and paper records. If an audit reveals a use of WKFS Deliverables that has not been paid for by Customer, Customer will pay for the WKFS Deliverables. The right to audit, and Customer’s obligation to cooperate in an audit, shall survive the termination of this Agreement for a period of one (1) year.


(a) Definition. “Confidential Information” means proprietary documents, materials, or information of WKFS or Customer (or their Affiliates, suppliers, licensors and/or customers) in which one party (or its Affiliates, suppliers, licensors and/or customers) (the “Discloser”) has an actual or claimed property or other right or interest and includes, without limitation (and whether or not marked as confidential), trade secrets, copyrights, patents, inventions, techniques, computer programs, software code (source and object code), custom modifications, algorithms, methods, logic, architecture and designs, business affairs, customer lists, customer information, product pricing, pricing plans, product development plans, marketing plans, and the terms and conditions of this Agreement, irrespective of whether any or all of such things are protected by intellectual property or other applicable law. The Confidential Information of WKFS includes: the WKFS Deliverables, including all source and/or object code and all parts and aspects thereof, and any modifications, enhancements, translations, localizations, or other derivative works thereof, in whatever form; the Documentation and any other documentation or materials provided with or related to the WKFS Deliverables; product roadmaps, if any, shared with the Customer; and all vendor information and pricing policies and information. Confidential Information also includes “Personal Information,” which is personal or personally identifiable information and records of or regarding Customer’s employees, investors, customers (including parties whose debt is serviced by Customer) and prospective customers of Customer. Confidential Information does not include any information that is, or becomes publicly available without breach of this Agreement, or which the receiving party (i) already possesses without obligation of confidentiality; (ii) develops independently without the Confidential Information of the other party, or (iii) rightfully receives without obligation of confidentiality from a third party.

(b) Confidentiality Obligations. Each Party (the “Recipient”) will keep all Confidential Information it receives from the Discloser strictly confidential and will use the same care to protect such Confidential Information as it employs with its own Confidential Information (but in no event less than reasonable care). Neither party will disclose any Confidential Information of the other party, except to its Affiliates, employees, subcontractors or agents who have a need to know such information, provided that, prior to
such disclosure, the disclosing party requires that each such Affiliate, employee, subcontractor or agent be bound to the restrictions on use and disclosure of Confidential Information set forth in this Agreement. The parties further agree that they will use Confidential Information solely for the purposes for which such information, or access to it, is provided pursuant to the terms of this Agreement. If disclosure of Confidential Information is required by law or regulation, before such disclosure Recipient agrees to give the Discloser prompt notice, to the extent permissible, so that it may seek a protective order. Upon any expiration or termination of this Agreement or otherwise promptly after the Discloser's reasonable request, the Recipient shall either return to Discloser or destroy and certify in writing to such party the destruction of any and all Confidential Information of such party in the Recipient's possession. Except as provided in the Recipient's record retention and destruction policies, the Recipient shall not be required to destroy any files on hard drives, servers, or other electronic storage media that are recoverable after deletion, or to destroy electronic records which have been created pursuant to any automatic archiving or backup procedures, provided that such Recipient shall not use or access any such individual recoverable, archived, or backup records or files following implementation of this provision. All Confidential Information shall remain the property of its Discloser or its Affiliates, suppliers, licensors or customers, as applicable. These confidentiality obligations shall survive for a period of five (5) years after Customer's termination of Support hereunder.

(c) **Data Security Obligations.** Customer and WKFS will each use commercially reasonable means to protect the confidentiality, integrity and security of Personal Information, including complying with the applicable requirements of Title V of the Gramm-Leach-Bliley Act and its implementing regulations ("GLB Act"), the objectives of the Interagency Guidelines Establishing Information Security Standards, and Section 216 the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") to the extent applicable. Each party will report to the other as soon as possible any data security breach involving Personal Information of the other party, and will cooperate with each other in taking actions to limit the effect of, and investigating the scope and source of, any security breach.

(d) The rights granted to the parties in this Agreement are unique and remedies for a breach by either party of this Section 6 will be inadequate; therefore the non-breaching party will be entitled to equitable relief in the event of a breach of this Section 6, including injunction and specific performance in addition to any other remedies available in this Agreement, at law or in equity.

7. **Limited Warranties and Remedies.**

(a) **WKFS Warranties.** WKFS represents and warrants that:

   (i) The WKFS Products will conform to the WKFS Products’ specifications or WKFS’ written technical requirements and user materials ("Specifications"), provided Customer uses the WKFS Deliverables in a manner consistent with the Specifications. When specifically provided in a Schedule, this warranty includes a limited warranty of compliance with laws (the "Compliance Warranty");

   (ii) WKFS will perform all Professional Services in a professional and workmanlike manner; and

   (iii) WKFS will utilize a commercially available anti-virus screening program to screen the media containing the licensed Software prior to delivering such media to Customer. Customer acknowledges that not all viruses can be detected by such programs and, therefore, WKFS does not represent or warrant that such media will be free of viruses.

(b) **Exclusive Remedies.** Customer's sole and exclusive remedy for the breach of a warranty is as follows:

   (i) For a material failure of Software to materially conform to the specifications set forth in the Documentation, promptly providing to Customer a repair or replacement of the WKFS Deliverable for conformance at no additional charge. If WKFS determines that such remedy is not economically or technically feasible, the applicable Schedule and the licenses granted thereunder will terminate and WKFS shall provide a prorated refund of the Fees paid with respect to the nonconforming Software.

   (ii) For a material breach of a warranty for Professional Services, the re-performance of the Professional Services at no additional charge to Customer; and

   (iii) If Customer's screening procedures detect a virus on such media, or if Customer is otherwise able to demonstrate that media supplied by WKFS is the source of a virus introduced into Customer's computing environment, WKFS will deliver a new copy or copies of the Software on media free of the identified virus, at no charge to Customer.

(c) **Warranty Limitation and Disclaimer.**

   (i) EXCEPT FOR THE WARRANTIES PROVIDED ABOVE, THE WKFS DELIVERABLES ARE PROVIDED “AS IS.” THE WARRANTIES PROVIDED ABOVE ARE LIMITED WARRANTIES AND, UNLESS OTHERWISE STATED IN A SCHEDULE, STATEMENT OF WORK, OR ORDER, ARE THE ONLY WARRANTIES MADE BY WKFS, ITS AFFILIATES, LICENSORS AND SUPPLIERS. WKFS, ON BEHALF OF ITSELF, ITS AFFILIATES, LICENSORS AND SUPPLIERS, EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO WKFS DELIVERABLES, INCLUDING WITHOUT LIMITATION NON-INFRINGEMENT AND ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

   (ii) WKFS does not warrant that the functions of the WKFS Deliverables will meet the Customer’s requirements or that operation of the WKFS Deliverables will be uninterrupted or error free. Customer assumes the responsibility for selecting the WKFS Deliverable to achieve its intended results and for the use and results obtained from the WKFS Deliverables.

   (iii) If the WKFS Deliverable includes a datafeed from a third party, such data has been obtained from sources considered reliable, but such information is not guaranteed and WKFS and its licensors make no representation or warranty as to the accuracy or completeness, or continued availability, of this information. WKFS, its Affiliates and its licensors shall not be liable for any errors or delays in the data or any content of any information provided through the WKFS Deliverable, or for any actions taken or determinations made by Customer, or any third party, in reliance thereon.
Further to the notice set forth on the cover of this Agreement: (i) Customer acknowledges and agrees that (A) to the extent any WKFS Deliverable may serve as a tool that may help Customer or its clients regarding any compliance, tax, accounting, legal, or investment related matters, it is up to Customer to decide whether any present or future use of such WKFS Deliverable will help achieve such purpose, (B) Customer should have its attorneys and other professional advisors review such use, both initially and on a continual basis, (C) WKFS is not authorized to provide tax, accounting, legal, compliance or investment advice, and (D) Although based on current law and information generally available, general assumptions may be made by WKFS and implemented within the WKFS Deliverables, which may not take into account potentially important considerations to specific users. Therefore, the views and information presented may not be appropriate for all of Customer’s clients or internal business needs. Customer should consult with Customer’s own tax, accounting, legal, compliance and/or investment advisors. Customer is solely and exclusively responsible, and WKFS shall have no liability, for the use of or actions taken or omitted based on a WKFS Deliverable, and all penalties or interest assessed in connection therewith.

(c) Additional Limitations. WKFS, its Affiliates, its suppliers and licensors shall have no liability for Customer’s use of WKFS Deliverables in combination with any other products, services, interfaces, forms or instructions provided by Customer, any other service provider of Customer, or any governmental agency.

(f) Mutual Warranties. Each party represents and warrants that (i) no contractual or legal obligations exist that would prevent it from entering into this Agreement; and (ii) it has the requisite authority to execute, deliver, and perform this Agreement.

8. WKFS Indemnities.

(a) Intellectual Property Infringement. WKFS will defend and indemnify Customer against any and all costs and reasonable expenses finally awarded by a court or agreed to in settlement which directly result from an unaffiliated, third party claim based on an allegation that a WKFS Deliverable infringes either a valid (i) United States patent or (ii) copyright of a country that is a party to the Agreement for Trade Related Aspects of Intellectual Property Rights (“TRIPS”) but only if WKFS is notified promptly in writing of such claim and given sole control of the defense of any such claim and all negotiations for its settlement or compromise. Customer agrees to reasonably cooperate with WKFS at WKFS’ expense in the defense, settlement or compromise of any such claim. In the event that a final injunction is obtained against Customer’s use of the WKFS Deliverable, if WKFS reasonably believes that Customer’s use of the WKFS Deliverable could be so enjoined, or if in WKFS’ opinion the WKFS Deliverable is likely to become the subject of a successful claim of such infringement, WKFS may, at its sole option and expense, (i) procure for Customer the right to continue using the WKFS Deliverable substantially as provided in the applicable Schedule or Order, (ii) modify or require replacement of the WKFS Deliverable that Customer is then currently using so that the WKFS Deliverable becomes non-infringing (so long as the functionality of the WKFS Deliverable is substantially similar) or, (iii) in the event neither of the previous two options are commercially reasonable in WKFS’s determination, terminate the applicable Schedule or Order and the rights granted thereunder and refund to Customer: (a) for a perpetual license, the amount paid to WKFS for the WKFS Deliverable less any amount for depreciation determined on a straight-line five-year depreciation basis with a commencement date as of the delivery date of the WKFS Deliverable; or (b) for a term or subscription license, all prepaid but unapplied Fees. Notwithstanding the foregoing, WKFS shall have no liability for a claim to the extent based on the use by Customer of the WKFS Deliverable more than thirty (30) days after WKFS has notified Customer of is option pursuant to (i), (ii) or (iii), above. THE FOREGOING INDEMNIFICATION PROVISIONS STATE THE ENTIRE LIABILITY OF WKFS AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT, MISAPPROPRIATION OR OTHER VIOLATION BY WKFS OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS IN RESPECT OF THE WKFS DELIVERABLES OR THEIR USE.

(b) Exceptions. Notwithstanding the foregoing, WKFS shall have no liability to Customer under this Section 8 to the extent that any infringement or claim thereof is based upon (i) the combination, operation or use of a WKFS Deliverable in combination with equipment or software not supplied or recommended by WKFS where the WKFS Deliverable would itself not be infringing; (ii) modification or alteration of the WKFS Deliverable by Customer or for Customer by any person other than WKFS or its authorized agent; (iii) use of the WKFS Deliverable in breach of this Agreement or in a manner not consistent with or contemplated by the Documentation; or (iv) use of a superseded or altered Version of any or all of the WKFS Deliverable if infringement would have been avoided or mitigated by the use of a subsequent unaltered Version (with all Updates) of the WKFS Deliverable that is provided to Customer as part of Support.

9. Limitation of Liability.

(a) Consequential and Other Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NONE OF WKFS, ITS AFFILIATES, SUPPLIERS, LICENSORS AND SUBCONTRACTORS NOR THEIR RESPECTIVE AFFILIATES, DISTRIBUTORS OR AGENTS WILL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS OF SALES, PROFITS, BUSINESS, GOODWILL, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR ANY EXEMPLARY, PUNITIVE OR SPECIAL LOSS OR DAMAGE, EVEN IF ADVISED OF THE POSSIBILITY OF THEIR OCCURRENCE, RESULTING FROM OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE WKFS DELIVERABLES OR ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE CLAIM OR ACTION (WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, STATUTE OR OTHERWISE). EACH EXCLUSION OR LIMITATION IS INTENDED TO BE A SEPARATE AND THEREFORE SEVERABLE EXCLUSION.
(b) Aggregate Liability. EXCEPT FOR ANY INDEMNIFICATION OBLIGATIONS ARISING UNDER SECTION 8, OF THIS AGREEMENT, THE ENTIRE AND COLLECTIVE LIABILITY OF WKFS, ITS AFFILIATES, SUPPLIERS, LICENSORS AND SUBCONTRACTORS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE WKFS DELIVERABLES, OR ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO WKFS FOR THE WKFS DELIVERABLE RESULTING IN SUCH LIABILITY IN THE TWELVE-MONTH PERIOD PRECEDING THE DATE SUCH CLAIM OR CAUSE OF ACTION FIRST AROSE. THE LIMITATION OF LIABILITY UNDER THIS SECTION 9 WILL BE APPLIED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

c) Limitations Period. Any claim or cause of action arising under or otherwise relating to this Agreement, any WKFS Deliverables or other subject matter hereof or thereof, whether based on contract, tort (including negligence) or otherwise, must be commenced within one year from the date such claim or cause of action first arose.

10. Termination.

(a) Material Breach. Either party may terminate this Agreement, any Schedule, any Statement of Work or any Order in the event of a material breach by the other party thereunder, if the breach is not cured within thirty (30) days following written notice stating, with particularity and in reasonable detail, the nature of the claimed breach.

(b) Failure to Pay. In the event any invoice remains unpaid by Customer forty-five (45) days after it is due, WKFS, at its sole option, may suspend its work on, or delivery of, the WKFS Deliverables, and/or suspend Customer’s access to and use of WKFS Deliverables.

(c) Convenience. If no Schedules are still in effect, either party may terminate this Agreement for convenience by providing written notice to the other party.

d) Effect of Termination. In the event of a termination of this Agreement for any reason, all Schedules still in effect will automatically terminate, unless otherwise agreed in writing by the Parties. Termination of a Schedule does not automatically terminate other Schedules or this Agreement.

(e) Obligations upon Termination. Upon termination of the Agreement or a Schedule, as applicable:

i) Unless otherwise expressly permitted in the applicable Schedule, Customer will immediately cease using all applicable WKFS Deliverables and de-install any Software. WKFS may request that Customer certify or otherwise provide reasonable assurances of Customer’s compliance with this obligation;

ii) Customer will pay all Fees, Taxes and Expenses outstanding and/or accrued as of the date of Termination and any termination fees, if any, provided for in the applicable Schedule(s); and

iii) Subject to Section 4(c) of this Agreement, each party that is a Recipient of the other party’s Confidential Information under Section 6 will promptly destroy or return all applicable Confidential Information as contemplated by this Agreement.

(f) Cumulative. The remedies contained in this Section 10 are cumulative to WKFS and are in addition to the other rights and remedies available to WKFS under this Agreement, by law or otherwise.

11. Insurance. WKFS carries the following types of insurance policies: (a) Commercial General Liability in an amount not less than US $1 million per occurrence for claims arising out of bodily injury and property damage; (b) Professional Liability (errors and omissions) in an amount not less than US $1 million per occurrence; (c) Workers Compensation as mandated or allowed by the laws of the jurisdiction in which Services are being performed, including US $1 million coverage for Employer’s Liability.

12. Governing Law, Dispute Resolution. This Agreement will be governed by the substantive laws of the State of New York, without reference to provisions relating to conflict of laws. The United Nations Convention of Contracts for the International Sale of Goods shall not apply to this Agreement. In the event of any dispute arising out of or relating to this Agreement (except for a dispute in which a party claims, in good faith, that it would be irreparably harmed by any delays): (i) the party raising the matter in dispute will notify the other in writing describing the nature of the dispute; (ii) each party will then appoint one or more representatives who will promptly meet and negotiate in good faith to reach a fair and equitable settlement; and (iii) at the end of 30 days, if no settlement has been reached, either party may end discussions and declare an impasse. To the maximum extent allowed by law, each party hereby waives all rights to a trial by jury to resolve any disputes arising under this Agreement.

13. Notices. Any written notice required or permitted to be given hereunder shall be given by (a) first class, postage prepaid; (b) registered or certified mail, return receipt requested; or (c) nationally recognized courier service to the other party at the address listed on the cover page or to such other address or person as a party may designate in writing. All such notices shall be effective upon receipt.

14. Further Actions. Each party will take such further actions to execute and deliver to the other such instruments and assignment as the other party may reasonably request to effect or evidence its rights hereunder.

15. Survival. The following sections shall survive expiration or termination of this Agreement: 3, 4(e), 4(f), 4(g), 5(e), 6, 9, 10(d), 12, 16 and 17.

16. Independent Contractors. Customer and WKFS expressly agree they are acting as independent contractors only, and specifically not as fiduciaries, partners, franchisees, or joint venturers, and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose.

17. Affirmative Action Notice: WKFS is subject to the provisions of: 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); 41 CFR Section 60-1.4(a) and (c); 41 CFR Section 60-1.7(a); 48 CFR Section 52.222-54(e); and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements. WKFS agrees to abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires
affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. WKFS also agrees to abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment. WKFS is notified that it might be subject to the provisions of 41 CFR Section 60-1(c), 41 CFR Section 60-250 and Section 60-741.5 with respect to affirmative action program and plan requirements.

18. General. Each party acknowledges that it has not entered into this Agreement in reliance upon any representation made by the other party not embodied in this Agreement. If any provision of this Agreement is held to be unenforceable or invalid, the other provisions shall continue in full force and effect. Neither party shall be responsible for delays or failures in performance resulting from acts reasonably beyond the control of that party. The failure of either party to insist on strict performance of any of the provisions hereunder shall not be construed as the waiver of any subsequent default of a similar nature. This Agreement, together with any Schedules executed hereunder, constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all previous agreements with respect thereto, including any confidentiality agreement entered into by the parties during discussions leading up to this Agreement. Modifications of this Agreement or any Schedules must be in writing and signed by duly authorized representatives of the parties. This Agreement is binding upon the parties and their respective successors and permitted assigns. Customer may not assign this Agreement, without the prior written consent of WKFS, and such consent will not be unreasonably withheld or delayed. However, Customer may assign this Agreement to its parent, subsidiary, or Affiliates, without the prior consent of WKFS so long as the Customer sends WKFS written notice of such assignment prior to such assignment and the assignee assumes all obligations of Customer under this Agreement, including the obligation to make all payments, if any, due under this Agreement prior to the date of assignment. Fees and charges may be modified in the event of an assignment.