Authorized Federal Supply Schedule Price List
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 GSA Advantage!® is: https://www.gsaadvantage.gov/

Contract # GS-35F-260CA
Period covered by contract Mar 27, 2015 to Mar 26, 2025

RED RIVER TECHNOLOGY LLC
Corporate Headquarters:
21 Water St., Suite 500
Claremont, NH 03743
GSAOrders@RedRiver.com
September 14, 2022
1a. **Table of awarded special item number(s) with appropriate cross-reference to item descriptions.**

**Special Item No./Category:**  
33411  
511210  
518210C  
532420L  
54151  
54151ECOM  
54151HEAL  
54151S  
811212  
Ancillary  
OLM

**Description:**  
Purchasing of new electronic equipment  
Software Licenses  
Cloud and Cloud related IT Professional Services  
Leasing of new electronic equipment  
Software Maintenance Services  
Electronic Commerce and Subscription Services  
Health Information Technology Services  
Information Technology Professional Services  
Maintenance of Equipment, Repair Services and/or Repair/Spare Parts  
Ancillary Supplies and Services  
Order-Level Materials

1b. **Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.**

**Special Item No.:**  
33411  
511210  
518210C  
532420L  
54151  
54151ECOM  
54151HEAL  
54151S  
811212  
Ancillary  
OLM

**Model/Part No., Unit Price:**  
151-BBDL, $0.01  
634-BTDX, $0.01  
B88872, $0.71  
Leasing of new electronic equipment-Negotiated  
634-BUQF, $0.01  
TMECLD-IPEXP01., $4.12  
RRPS-VP-I., $61.96  
983-9619, $14.36  
378-7453, $0.01

1c. **If the contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility, and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate “Not applicable” for this item.**
<table>
<thead>
<tr>
<th>SIN/Labor Category</th>
<th>Job title/Functional responsibility/Model/Part#</th>
<th>Education</th>
<th>Experience</th>
<th>Hourly rate (including IFF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>54151S/54151HEAL</td>
<td>Voice/Telephony Professional Subject Matter Expert (RRPS-VP-SME)</td>
<td>BACHELOR’S DEGREE</td>
<td>10 YRS</td>
<td>$185.88</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Voice/Telephony Professional Level III (RRPS-VP-III)</td>
<td>BACHELOR’S DEGREE</td>
<td>7 YRS</td>
<td>$144.58</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Voice/Telephony Professional Level II (RRPS-VP-II)</td>
<td>BACHELOR’S DEGREE</td>
<td>5 YRS</td>
<td>$90.88</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Voice/Telephony Professional Level I (RRPS-VP-I)</td>
<td>HIGH SCHOOL DIPLOMA</td>
<td>1-3 YRS</td>
<td>$61.96</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Wireless Professional Level III (RRPS-WP-III)</td>
<td>BACHELOR’S DEGREE</td>
<td>7 YRS</td>
<td>$144.58</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Server/System Professional III (RRPS-SRP-III)</td>
<td>BACHELOR’S DEGREE</td>
<td>7 YRS</td>
<td>$144.58</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Security Professional/Consultant III (RRPS-SEP-III)</td>
<td>BACHELOR’S DEGREE</td>
<td>7 YRS</td>
<td>$144.58</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Networking Professional/Consultant Subject Matter Expert (RRPS-NP-SME)</td>
<td>BACHELOR’S DEGREE</td>
<td>10 YRS</td>
<td>$185.88</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Networking Professional/Consultant III (RRPS-NP-III)</td>
<td>BACHELOR’S DEGREE</td>
<td>7 YRS</td>
<td>$144.58</td>
</tr>
<tr>
<td>54151S/54151HEAL</td>
<td>Networking Professional/Consultant II (RRPS-NP-II)</td>
<td>BACHELOR’S DEGREE</td>
<td>5 YRS</td>
<td>$90.88</td>
</tr>
<tr>
<td>54151S</td>
<td>Program Manager (RRPS-PGM)</td>
<td>BACHELOR’S DEGREE</td>
<td>8 YRS</td>
<td>$130.98</td>
</tr>
<tr>
<td>54151S</td>
<td>Task Manager (RRPS-TM)</td>
<td>BACHELOR’S DEGREE</td>
<td>5 YRS</td>
<td>$75.57</td>
</tr>
<tr>
<td>54151S</td>
<td>Database Analyst/Programmer (RRPS-EAD-DB)</td>
<td>BACHELOR’S DEGREE</td>
<td>7 YRS</td>
<td>$100.10</td>
</tr>
<tr>
<td>54151S</td>
<td>Documentation Specialist/Technical Writer (RRPS-EAD-DS)</td>
<td>BACHELOR’S DEGREE</td>
<td>5 YRS</td>
<td>$85.03</td>
</tr>
<tr>
<td>54151S</td>
<td>Project Manager (RRPS-EAD-PM)</td>
<td>BACHELOR’S DEGREE</td>
<td>10 YRS</td>
<td>$129.82</td>
</tr>
<tr>
<td>54151S</td>
<td>Quality Assurance/Configuration Analyst (RRPS-EAD-QA)</td>
<td>BACHELOR’S DEGREE</td>
<td>6 YRS</td>
<td>$119.43</td>
</tr>
<tr>
<td>54151S</td>
<td>Systems Architect (RRPS-EAD-SA)</td>
<td>BACHELOR’S DEGREE</td>
<td>5 YRS</td>
<td>$142.93</td>
</tr>
<tr>
<td>54151S</td>
<td>Systems Engineer (RRPS-EAD-SE)</td>
<td>BACHELOR’S DEGREE</td>
<td>6 YRS</td>
<td>$120.29</td>
</tr>
<tr>
<td>54151S</td>
<td>Technical Specialist (RRPS-EAD-TS)</td>
<td>BACHELOR’S DEGREE</td>
<td>5 YRS</td>
<td>$116.81</td>
</tr>
<tr>
<td>54151S</td>
<td>Web Developer (RRPS-EAD-WD)</td>
<td>BACHELOR’S DEGREE</td>
<td>3 YRS</td>
<td>$104.81</td>
</tr>
<tr>
<td>ANCILLARY</td>
<td>PROJECT MANAGER (RRPS-PM-A)</td>
<td>BACHELOR'S DEGREE</td>
<td>10 YRS</td>
<td>$175.00</td>
</tr>
<tr>
<td>-----------</td>
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<td>--------------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>ANCILLARY</td>
<td>TASK MANAGER (RRPS-TM-A)</td>
<td>BACHELOR'S DEGREE</td>
<td>5 YRS</td>
<td>$95.00</td>
</tr>
</tbody>
</table>

2. **Maximum order:** $500,000 or Red River Technology LLC and the Ordering Agency may agree to a different maximum threshold at the Task Order Level

3. **Minimum order:** $100

4. **Geographic coverage (delivery area):** Domestic Delivery within the 48 contiguous states.

5. **Point(s) of production (city, county, and state or foreign country):**

<table>
<thead>
<tr>
<th>Manufacturer/Owner</th>
<th>Production Point</th>
</tr>
</thead>
<tbody>
<tr>
<td>FM:Systems Group, LLC</td>
<td>Raleigh, NC</td>
</tr>
<tr>
<td>Avue Technologies Corp.</td>
<td>Puyallup, WA</td>
</tr>
<tr>
<td>CrestPoint Solutions, Inc.</td>
<td>Pleasanton, CA</td>
</tr>
<tr>
<td>Dell Inc.</td>
<td>Round Rock, TX</td>
</tr>
<tr>
<td>Eggplant</td>
<td>Colorado Springs, CO</td>
</tr>
<tr>
<td>Everbridge</td>
<td>Burlington, MA</td>
</tr>
<tr>
<td>Harris Corporation</td>
<td>Melbourne, FL</td>
</tr>
<tr>
<td>Infocus Corporation</td>
<td>Portland, OR</td>
</tr>
<tr>
<td>Lexmark International, Inc.</td>
<td>Lexington, KY</td>
</tr>
<tr>
<td>Microsoft Corporation</td>
<td>Albuquerque, NM</td>
</tr>
<tr>
<td>Oracle, Inc.</td>
<td>Austin, TX</td>
</tr>
<tr>
<td>Synology America Corp.</td>
<td>Bellevue, WA</td>
</tr>
<tr>
<td>Transition Networks</td>
<td>Minnetonka, MN</td>
</tr>
<tr>
<td>Uplogix, Inc.</td>
<td>Austin, TX</td>
</tr>
<tr>
<td>Verizon</td>
<td>Ashburn, VA</td>
</tr>
</tbody>
</table>

6. **Discount from list price or statement of net price:**

   Please see GSA Advantage! [http://www.gsaadvantage.gov](http://www.gsaadvantage.gov)

7. **Quantity discount:** None

8. **Prompt payment terms:** Net 30 days (no prompt payment discount)

9a. **Notification that Government purchase cards are accepted at or below the micro-purchase threshold:** Yes

9b. **Notification whether Government purchase cards are accepted or not accepted above the micro-purchase threshold:** Red River Technology LLC and the Ordering Agency may agree to use the Government purchase cards for dollar amounts over the micro-purchase threshold.

10. **Foreign items (list items by country of origin):** TAA identified with Country of Origin when submitted.

11a. **Time of delivery:** TBD at Task Order Level

11b. **Expedited Delivery:** TBD at Task Order Level
11c. **Overnight and 2-day deliver.** The contractor will indicate whether overnight and 2-day deliver are available: TBD at Task Order Level.

12. **F.O.B point(s):** Destination

13a. **Ordering address(es):** GSAOrders@RedRiver.com
Red River Technology, LLC
21 Water Street, Suite 500
Claremont, NH 03743

13b. **Ordering procedures:** Ordering activities shall use the ordering procedures described in Federal Acquisition Regulation 8.405-3 when placing an order or establishing a BPA for supplies or services. The ordering procedures, information on Blanket Purchase Agreements (BPA’s) and a sample BPA can be found at the GSA/FSS Schedule homepage: [https://www.gsa.gov.buying-selling/purchasing-programs/gsa-schedules](https://www.gsa.gov.buying-selling/purchasing-programs/gsa-schedules)

14. **Payment address(es).**
Red River Technology, LLC
Attention: GSA Schedule Orders
PO Box 780924
Philadelphia, PA 19178-0924
Phone: 603-448-8880
Fax: 603-448-8844
Email: info@redriver.com

15. **Warranty provision:** Red River Technology LLC will passthrough all product warranties Red River Technology LLC receives from Original Equipment Manufacturers. Red River Technology LLC and the Ordering Agency may discuss additional warranty provisions at the task order level.

FM:Systems: End User license Agreement-Attached
Avue Technologies Corp: End User License Agreement-Attached
CrestPoint Solutions, Inc: End User License Agreement-Attached
Dell Marketing: 3-year warranty
Everbridge: Product dependent-End User License Agreement Attached
Harris Corp: Product dependent
InFocus Corp: 1-year Warranty
Lexmark International Inc: Product dependent (1-year or 20year warranty)
Microsoft Corp: Product dependent-End User License Agreement-Attached
Synology America Corp: 5-year limited warranty
Transition Network Products: Product Dependent (1-year, 5-year, or lifetime warranty)
Uplogix Inc: Product dependent
Verizon: 1-year warranty
Oracle: see full Oracle Ts & Cs attached

16. **Terms and conditions of Government Purchase Card acceptance:** Red River Technology LLC and the Ordering Agency may agree to use Government purchase cards for dollar amounts over the micro-purchase threshold.

17. **Terms and conditions for rental, maintenance, and repair (if applicable):** TBD at Task Order Level
18. Terms and conditions of installation (if applicable): TBD at Task Order Level

19. Terms and conditions of repair parts indicating data of parts price lists and any discounts from list price (if applicable): TBD at Task Order Level

20. List of service and distribution points (if applicable): TBD at Task Order Level

21. List of participation dealers (if applicable): Not Applicable

22. Preventive maintenance (if applicable): TBD at Task Order Level

23a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants): TBD at Task Order Level

23b. If applicable, indicate that 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

24. Data Universal Number System (DUNS) Number: 933678708

25. NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE: Red river Technology LLC has an Active Registration in the SAM database.

Multiple Award Schedule – Available offerings include commercial goods and service organized by 12 Large Categories, Corresponding Subcategories, and SINs.

33411 Purchasing of new electronic equipment Includes desktop, laptop, tablet computers (including rugged), servers, storage equipment, hyperconverged integrated systems, supercomputers, routers, switches and other communication equipment, IT security equipment (hardware based firewalls), audio and video (AV) equipment, public address systems, monitors/displays, sensors and other Internet of things (IOT) devices, printers and multi-Function Device (MFD) equipment, broadcast band radio, two-way radio (LMR), microwave radio equipment, satellite communications equipment, radio transmitters/receivers (airborne), radio navigation equipment/antennas, optical/imaging systems, and associated peripherals required for operation (such as controllers, connectors, cables, drivers, adapters, etc., ancillary installation of any equipment purchased.

511210 Software License Includes both term and perpetual software licenses and maintenance.

518210C Cloud and Cloud Related IT professional Services Includes commercially available could computing services such as Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and software as a service (SaaS) and emerging cloud services, IT professional services that are focused on providing the types of services that support the Government’s adoption of migration to the governance/management of Cloud computing. Specific labor categories and/or fixed price solutions (e.g. migration services, etc.) that support activities associated with assessing Cloud solutions, providing management/governance of cloud solutions, DevOps, developing cloud native applications or other Cloud oriented activities.

53240L Leasing of new electronic equipment, includes the following lease types: Lease Ownership, and
Lease with Option to Own

54151  
Software Maintenance Services Software maintenance service creates, designs, implements, and/or integrates customized changes to software. Software maintenance services includes person-to-person communications regardless of the medium used to communicate telephone support, online technical support, customized support, and/or technical expertise which are charged commercially.

54151ECOM  
Electronic Commerce and Subscription Services Includes value added network services, e-mail services, Internet access services, electronic subscription services, data transmission services, and emerging electronic commerce technologies.

54151HEAL  
Health Information Technology Services Includes a wide range of Health IT services to include connected health, electronic health records, health information exchange, health analytics, personal health information management, innovative Health IT solutions, health informatics, emerging Health IT research, and other Health IT services.

54151S  
Information Technology Professional Services IT Professional Services and/or Labor categories for database planning and design; systems analysis, integration, and design; programming, conversion and implementation support; network services, data/records management, and testing.

811212  

Ancillary  
Ancillary Supplies and Services – Ancillary supplies and/or services are support supplies and/or services which are not within the scope of any other SIN on this schedule. These supplies and/or services are necessary to complement a contractor’s offerings to provide a solution to a customer requirement. The SIN may be used for orders and blanket purchase agreements that involve work or project that is solely associated with the supplies and/or services purchased under this schedule. NOTE: When used in conjunction with a Cooperative Purchasing eligible SIN, this SIN is Cooperative Purchasing Eligible.

OLM  
Order-level Materials (OLM) OLMs are supplies and/or services acquired in direct support of an individual task or delivery order placed against a schedule contract or BPA. OLM pricing is not established at the schedule contract or BPA level, but the order level. Since OLMs are identified and acquired at the order level, the ordering contracting officer (OCO) is responsible for making a fair and reasonable price determination for all OLMs.

OLMs are procured under a special ordering procedure that simplifies the process for acquiring supplies and services necessary to support individual task or delivery orders placed against a Schedule contract or BPA. Using this new procedure, ancillary supplies and services not known at the time of the schedule award may be included and priced at the order level.

OLM SIN-Level Requirements/Ordering Instructions:
OLMs are:
-Purchased Under Authority of FSS Program
-Unknown until an order is placed
- Defined and priced at the ordering activity level in accordance with GSAR clause 552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials. (Price analysis for OLMs is not conducted when awarding the FSS contract or FSS BPA; therefore, GSAR 538.270 and 538.271 do not apply to OLMs)
- Only authorized for use in direct support of another awarded SIN.
- Only authorized for inclusion at the order level under a time-and-materials (T&M) or Labor-Hour (LH) contract Line Item Number (CLIN)
- Subjected to a Not to Exceed (NTE) ceiling price

OLMs are not:
- Open Market Items
- Items awarded under ancillary supplies/services or other direct cost (ODC) SINs (these items are defined, priced, and awarded at the FSS contract level)

OLM Pricing:
- Prices for items provided under the Order-Level Materials SIN must be inclusive of the Industrial Funding Fee (IFF)
- The value of OLMs in a task or deliver order, or the cumulative value of OLMs in orders against an FSS BPA awarded under FSS contract, cannot exceed 33.33%.

Please find Red River's price list for Oracle and Dell in the following links:
Red River Dell GSA Price List
Red River’s Oracle GSA Price List
These price List are a reference, for an accurate quote on products please contact Red River at GSA@redriver.com.

Attachments
GSA Approved:
OEM Terms & Conditions and EULAs
Avue Technologies Corporation

Avue Digital Services® Master Subscription Agreement

With

[Client Agency (____)]

Subscriber

Purchased Through Red River, an authorized Avue Reseller

Effective: ________________

Avue, Avue Digital Services, Avue Atlas, Indigo by Avue, Skillscape, Avue Command Center, Avue Navigator, Accreditchek, Avue Workforce Services, and Avue Enterprise Direct are registered trademarks of Avue Technologies Corporation. Avue Indigo™ and Avue Enterprise Genome™ are trademarks of Avue Technologies Corporation. The contents of this document are copyrighted by Avue Technologies Corporation, All Rights Reserved.
General Provisions Governing Entire Agreement

This Master Subscription Agreement Prevails

Except to the extent provided expressly to the contrary by federal statute or regulation, this Master Subscription Agreement (MSA) shall govern in the event of a conflict with the Statement of Work or any other provision contained in the contract of which this Agreement is a part, including, without limitation, rights to data.

The “Products and Services” to be provided under the contract as stated in Box 20 of SF 1449, for example, shall include a statement that “Avue shall provide all products and services under this contract in accordance with the Avue Master Subscription Agreement.”

For federal government Subscribers, the Subscribed Services are commercial items under FAR 2.101 and the MSA’s commercial license to the Subscribed Services shall be incorporated into and attached to the applicable contract.

Total Avue Platform Contract

As part of the contract to which this Agreement is incorporated, Subscriber is subscribing to the entire Avue Digital Services® (ADS) offering, including modules that may be added from time to time during the contract period. Under this “Total Avue Platform Contract” however, Subscriber will be charged for Initialization, Annual Subscription Fees, and Extranet Fees only for “activated” ADS modules. Activation is deemed to occur when Subscriber requests that Avue initiate Subscriber access to the module. Subscriber will also have the right, by a simple modification of this contract, to activate newly offered Avue modules for mutually agreed prices.

Addition of Other Components

Subscriber shall have the right to add as “Additional Subscribers” to coverage by this MSA so long as the addition is another agency within the same department or the department itself, and provided that additional eligible Economy Act purchasers outside the department may also be added to the extent permitted by law. Adding a subscriber will be accomplished with the “Additional Subscriber Attachments” (1-A, 1-B, etc.). These Additional Subscriber Attachments will identify the added entity and its Covered Subscriber Community together with the designation of the Additional Subscriber’s activated Avue Modules with pricing. When the Additional Subscriber Attachments have been completed and approved by Avue, the Additional Subscriber will be deemed to be a “Subscriber” for purposes of this Agreement. The overall contract vehicle itself shall continue to be administered by the original Subscriber, which shall act solely as the contracting agent on behalf of all Additional Subscribers. For all purposes, each Additional Subscriber is independently a Subscriber, and all of the legal rights and obligations of the MSA and the Additional Subscriber Attachments shall be deemed to flow directly between the Additional Subscriber and Avue Technologies Corporation. Avue will provide all relevant services directly to the Additional Subscriber and as directed by it.
1.0 Enterprise Subscription

This Master Subscription Agreement (the “Agreement”) (including the “General Provisions” preceding this page) for Avue Digital Services® (“ADS”) is effective as of the date set forth in the Purchase Order, Statement of Work, or similar document (the “Effective Date”) between Avue Technologies Corporation (“Avue”) and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Subscriber”). This MSA is an end user license agreement; when incorporated by reference in an agreement with the end user – including through a reseller – it is entered into between the end user and Avue and provides privity of contract between them with respect to its terms and conditions. Attachment 1 identifies the ADS modules covered (the “Subscribed ADS Modules”) and the Covered Subscriber Community (CSC) entitled to access them, together with other matters about the Subscriber’s Avue Subscription.

2.0 Subscription Periods

Avue sells ADS enterprise subscriptions on an annual or monthly basis that begins on the Effective Date. For annual subscriptions, the client can make a single payment on or before the Effective Date, or in 12 equal monthly installments paid beginning with the Effective Date. For monthly subscriptions, the client pays its subscription fees on a month-to-month basis starting with the Effective Date. Attachment 1 states whether the subscription is annual (and whether payable in single or monthly payments) or month-to-month and the applicable effective dates. The Subscriber may renew its Annual Subscription by issuing an appropriate written renewal order before the end of its then-current Subscription Period.

3.0 Scope of Subscription and Incidental Services

3.1 The ADS Subscription and services related to it (the “Subscribed Services”) include for each Subscriber:

(a) Access through the internet or the Subscriber’s intranet to the Subscribed ADS Modules, including their associated user interface, application software, and content databases;

(b) startup and ongoing configuration for each of the Subscribed ADS Modules;

(c) ongoing software application and database management and administration, including updates and upgrades;

(d) professional deployment services support such as training and briefings for all HR practitioners, managers, and employees;

(e) help desk assistance for all system users; and

(f) professional human resources staff support directly to managers using the Subscribed ADS Modules.

For the federal government, Avue Digital Services constitutes “software maintenance as a product” and 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. Software maintenance as a product may also include no-charge support that is part of the purchase price of the product in the commercial marketplace. No-charge support may contain items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email, and web-based general technical support for user’s self-diagnostics.

3.2 Each Avue enterprise subscription is offered on an “all-you-can-eat” basis which means Avue supports unlimited use by the client organization and its employees, as well as, depending upon the module, external users such as applicants and contractors. For its enterprise customers, Avue does not assess fees for ADS on a per-seat, per-server, per-transaction, or professional service fee basis. Avue enterprise subscription fees constitute fixed price, all-inclusive coverage of ADS start-up activation and use. Coverage includes the addition of client-specific occupational and workforce management content, job requirements, and business logic rules engines, as well as all the training, internal communications, marketing, and change management and support the client reasonably needs throughout the life of the subscription. Avue typically offers training and other periodic presentations to its customers in a setting where it provides modest food and refreshments throughout the day to attendees; attendees have the option of partaking or not.

3.3 The Subscriber’s enterprise subscription to Avue Digital Services includes, as part of the fixed-price, for the entire life of the Subscription, at no additional charge, Avue Enterprise Direct®, including service support through the Avue Concierge®. Avue Concierge® includes Avue expert call center support directly to managers such that, used in combination with the Subscribed Modules, the Subscriber need not maintain internal HR resources to provide supervisor and management support.

3.4 Consistent with Section 7, upon the Subscriber's request and for an additional charge, Avue may provide supplemental and incidental services as mutually agreed.

3.5 Attachment 2 contains a description of the current Avue Digital Services offering. At its discretion, Avue may from time to time add, withdraw, or modify ADS modules. Avue will not, however, withdraw an ADS Module for which there is a valid outstanding
subscription in place without reasonable notice to the Subscriber.

4.0 Covered Subscriber Community (CSC)

4.1 Avue uses a subscription model appropriate for Cloud-based, Software-as-a-Service (SaaS) offerings. Avue’s price to the Subscriber is a function of the number of members in one or more identified groups— the Covered Subscriber Community (CSC)— rather than “seats” or usage.

4.1.1 Avue’s service permits unlimited concurrent users within the CSC. Also, although not identified or counted as CSC members, non-employees who are necessary participants (“Adjunct Users”) in an automated Avue process are permitted access limited to their role in the process.

4.1.2 The Subscriber shall not allow or enable any user that is not a member of the CSC or an Adjunct User to access the Avue System. The Subscriber itself shall not, and shall not allow or enable any otherwise allow a member of the CSC to, use the Avue System on behalf of any other person, organization, or entity that is not part of the CSC, nor to provide Avue Material to any such other person, organization, or entity. The preceding prohibition includes without limitation product demonstrations to others outside of the Subscriber, except as may otherwise be provided in this Agreement, MSA Attachment 1, or otherwise with Avue’s express written consent. Notwithstanding the preceding sentence, Agencies or components that have been designated by Avue as a Departmental Lead may make demonstrations to potential Additional Subscribers.

4.1.3 Unless otherwise expressly provided in this Agreement or Attachment 1, the CSC includes only employees of the Subscriber. For Subscriber agencies, individual “staff augmentation” professional service contractors to the Subscriber may each be permitted limited access as an Adjunct User to perform their contracted tasks provided they each: (a) are not employees of a competitor of Avue; and (b) agree to be bound to the terms of a system use agreement in a form reasonably satisfactory to Avue. If a professional services contractor described in this Subsection is employed by or provided through a business organization, then that business organization must also not be a competitor of Avue and must execute a written guarantee directly in Avue’s favor explicitly accepting full liability for any breach by the individual of their obligations under the system use agreement.

4.1.4 If expressly provided in Attachment 1 and included in the CSC population for pricing purposes, the CSC may include other components or agencies that the Subscriber “cross-services” or provides shared services.

4.1.5 For pricing purposes, the baseline CSC is equal to the number of FTE specified in the Subscriber’s authorized fiscal year budget for the year in which the subscription period begins. For certain circumstances and modules, the Subscriber may also make its “Contingent Workforce” part of the CSC coverage. “Contingent Workforce” consists of individuals that perform work on the basis that does not constitute employment, such as contractors, “gig economy workers,” and similar engagements. When made part of the CSC Contingent Workforce, members are included as a group to determine the CSC size for determining the Avue price using a method agreed upon by Subscriber and Avue.

5.0 Right to Use Avue Digital Services

5.1 Definitions. For purposes of this Article:

5.1.1 “ADS Material” includes any and all of the following aspects of Avue Digital Services®, whether owned by Avue and/or third parties -- databases, data, services, functions, content, functionality, rules, documents, reports, and associated Avue-provided interfaces -- which exist at any time during the Subscription Period except for data and documents that constitute Client Data. It also includes materials purchased as provided in section 7.0 and generated by the use of ADS.

5.1.2 “Client Data” includes:

(a) Individual historical data elements relating to specific individuals that are customarily contained in an individual employee record. These include, for example, name, date of birth, SSN, education, occupational series, grade, salary, and similar data; and

(b) Individual historical data elements that are quantitative or otherwise arise from one or more specific transactions so long as these data elements can be downloaded during authorized use by the Subscriber from a report generated from the “Online Reports” interface embedded in Avue. These include, for example, individual performance ratings, transaction processing cycle time metrics, employee complaint proceeding outcomes, and similar data; and

(c) Documents, solely in their original form, provided to Avue by Subscriber. These include, for example, position descriptions and performance plans produced by or for Subscriber before the applicable Subscription Period.

5.1.3 For a Subscriber that is a U.S. Government agency ("Government Subscriber"), the following shall apply notwithstanding any other section of this Agreement:
(a) In addition to section 5.1.2, “Client Data” shall include the following (the “Government Data”): any data in its original form that the Government Subscriber owns and provides to Avue under this Agreement. Government Data also includes data the Government Subscriber first develops and enters into an Avue-hosted database using a Subscribed ADS Module during the Subscription Period; provided any such data are not, in whole or in part, ADS Material and/or include Avue’s proprietary format, display or database correlations. Government Data does not include derivative works of ADS Material prepared by the Government Subscriber. Avue shall maintain the ability to segregate all Government Data from ADS Material, including segregating Government Data embedded in derivative works of ADS Material or other Avue proprietary information.

(b) To the extent that the Government Subscriber does not already own the Government Data, the Government Subscriber shall have unlimited rights under FAR 52.227-14 to the Government Data, including the right to use, duplicate and disclose the Government Data for purposes of migrating such data to a non-Avue database after the Subscription Period. The Government Subscriber’s unlimited rights to the Government Data shall survive the expiration or termination of this Agreement.

(c) Avue will return all Government Data upon request to the Government Subscriber in a .csv, ASCII, or other format agreed upon by Avue and the Government Subscriber, provided such request occurs within the Subscription Period or thirty (30) days after the Subscription Period.

5.2 Subject to sections 5.3 through 5.9 of this Article, Subscriber shall have a non-exclusive, non-transferable, limited right to use Avue Digital Services® for access to the Subscribed ADS Modules during the applicable Subscription Period under this Agreement. This limited right includes the ability to make use, for its internal operations, of any printable output (whether in hard copy or electronic form) of data that it generates or downloads through its authorized use of Avue Digital Services®.

5.3 So long as separated from Avue’s proprietary format, display, or database correlations, Subscriber shall have the right to use and maintain Client Data outside the Avue Digital Services® system at any time.

5.4 Avue Digital Services® may be used only by members of the Covered Subscriber Community and associated Adjunct Users, using an Avue provided software interface.

5.5 Use of Avue Digital Services® by Subscriber shall be only for the Subscriber’s internal business purposes solely in the course of satisfying the Subscriber’s internal business needs during the term of this Agreement.

5.6 ADS Material (including archival documents) may only be copied and used for: (1) processing of current human resources transactions during the Subscription Period (e.g., creating positions, staffing vacancies); (2) the continued use of a document image artifact (e.g., position description used with a subsequent position occupant) generated under the previous clause so long as it is not materially altered and does not violate any provision of Section 5 other than its use after the subscription; and (3) recordkeeping with respect to current and past human resources transactions. Use of ADS Material to feed another system in any form other than as a “read-only” image, or to compile or create a competing or successor human resources database or system (whether or not a Subscribed Module) for use by Subscriber or any other organization – e.g., a library or electronic system usable in processing future transactions independent of ADS - is strictly prohibited.

5.7 Except for record keeping purposes described in the preceding section, in no event shall Subscriber access, download, print, store, extract, copy, publish, transmit, transfer, or transport to another program, ADS Material for use after termination or expiration of the Subscription Period, or use independent of, the Subscribed ADS Modules. The Subscriber shall not incorporate any of the ADS Material in any other work.

5.8 In no event shall Subscriber access or otherwise use Avue Digital Services® (including any ADS Material) to develop a product, program, or resource that provides similar functionality or is otherwise similar to Avue Digital Services®, including, without limitation, the Subscribed ADS Modules, whether for internal use or for the use of other agencies or third parties. Subscriber shall not reverse compile, disassemble, or reverse engineer the ADS Material. Subscriber shall not sell, license, or distribute any ADS Material to third parties (including, without limitation, other government agencies) or use any ADS Material as a component of or as a basis for any material offered for sale, license, or distribution.

5.9 Section 5 of this Agreement and its subsections do not prevent internal use during the subscription period by Subscriber for internal Subscriber purposes of the output from the ADS Material, including but not limited to reports, position descriptions, and vacancy announcements. Additionally, except for sub-sections 5.6, 5.7, and 5.8, the provisions in Section 5 do not otherwise limit the rights of Subscriber in any way to data and information developed, entered into, and processed through Avue’s information system(s) by Subscriber which is not technical data or computer software, and the reference to documents or data in their “original form” is not intended to limit the rights of Subscriber in data developed by Subscriber which may be modified or updated. By the same token, simply by using the ADS Material or inputting its own data into the ADS Material, Subscriber does not obtain any rights in the ADS Material. Nothing in this section is intended to narrow the scope of ADS Material or expand the scope of Client Data for purposes of sub-sections 5.6, 5.7, and 5.8 of this Agreement, which shall apply to any data and information.
developed, entered into, and processed through Avue’s information system(s) by Subscriber that includes ADS Material. At any time during the term of the contract at the request of the Subscriber, and at contract closeout, Avue will provide said data in a format previously identified by Subscriber. Data formats include, but are not limited to, XML, CSV, and PDF, but do not include MS Word.

6.0 Extranet Access and Operations

6.1 Avue’s Overall Responsibilities. Avue will be responsible for managing the Extranet Data Center, the ADS applications, and the connectivity of the Data Center to the Internet.

6.1.1 Avue Digital Services gives subscription access to various Avue Web-based expert system modules that provide application functionality and specialized content. Avue Digital Services offers access to the user via an “extranet” delivery mechanism that enables access to Avue Digital Services via a web browser.

6.1.2 Avue will provide Subscriber with Extranet access to the Subscribed ADS Modules. Access includes the applications, databases, and services required to provide extranet access to these modules for the Covered Subscriber Community identified in Attachment 1.

6.1.3 Avue will perform database and application upgrades, as part of the Subscribed Services. The Subscribed Services include: (1) access to the Subscribed ADS Modules (including content databases) through an Avue-provided user interface for which a valid, current subscription is in force; (2) all hardware, network, and support software required for the Data Center; (3) physically secure Data Centers which secure Subscriber data; (4) data center processes needed to ensure a stable and reliable service; (5) configuration and testing of all computer components; and (6) operations support as described in more detail in this Section 6.0.

6.1.4 The Extranet Services are designed to deliver access to Subscribed ADS Modules, and, specifically the Subscribed Services, from a web browser. Avue will provide the services offered via the Extranet and will be responsible for the operation of Extranet Data Centers and their connectivity to the Internet. The Internet will be the means of access for the Subscriber to connect to the extranet services. All network traffic between the browser and the Extranet Data Center will be fully authenticated and encrypted. Security will be provided using authentication gateways, firewalls, and encryption technologies.

6.2 Connectivity / Communications. Access to the Subscribed ADS Modules includes access via a Web browser connected to through the user’s internet service provider(s) to the Internet.

6.3 Roles and Responsibilities:

6.3.1 Subscriber will be responsible for providing its users’ internet access from the Subscriber’s work sites using a browser that supports a secure socket layer (SSL) and is supported by Avue Digital Services (a “Supported Browser”). Subscriber will specify the Supported Browser to employees and other users.

6.3.2 The Subscriber will be responsible for all network issues that are within the Subscriber’s LANs, WANs, or contracted ISP Services.

6.3.3 Avue will be responsible for all network issues within the Extranet Data Center, as well as the provision of sufficient bandwidth from the Data Center to the Internet for transmitting and receiving ADS data per the terms of this Agreement.

6.3.4 Avue will be responsible for the provision of sufficient network capacity (bandwidth) for the Extranet Data Center to accommodate all Covered Subscriber Community users connecting to the Extranet Data Center.

6.3.5 Avue will provide, on an extended hour basis, call center support for users. If the Avue call center determines that the user issue stems from the Subscriber’s network environment, Subscriber’s technical staff will promptly work with their Avue counterparts to resolve the issue.

6.3.6 Avue will be responsible for dealing with all problems that are related to the Extranet Data Center or the Center’s connectivity to the Internet.

6.3.7 Where the Subscriber has gone through a network problem determination process and cannot identify the location of the network problem, Avue and the Subscriber will work together to resolve it.

6.3.8 Avue will be responsible for monitoring network activity and availability from the Extranet Data Center to the Internet.

6.3.9 Avue will be responsible for reporting, to the Subscriber monthly, on the following network services:

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(a) Number of concurrent sessions  
(b) Response time statistics (between the Data Center and the Internet)  
(c) Internet connection utilization for the Extranet Data Center  
(d) Service Availability Statistics  
(e) File Transfer Volumes

6.4 Server Management

6.4.1 Avue will be responsible for maintaining the availability of the Subscribed ADS Modules. Subscriber authorized users are those users with a user ID and password assigned by the Subscriber. Subject to the provisions of Section 9, “Performance Elements” of this Agreement, availability will be 7x24 for 365 days per year except for maintenance and backup. During a system outage, Avue will issue an information notice to users and have available online, the next system availability time.

6.4.2 Avue will be responsible for the provision of sufficient server capacity for the Extranet Data Center to accommodate all Covered Subscriber Community users connecting to the Extranet Data Center.

6.4.3 Avue will be responsible for maintaining disk mirroring or RAID5 data sets.

6.4.4 Avue will be responsible for maintaining system redundancy:

(a) Alternate network pathing within the Data Center and to the Internet;  
(b) Alternate connectivity paths to the disk storage units.  
(c) n+1 redundancy for power supplies within the database, application, Firewall, and authentication servers.

6.4.5 In the event of a major power outage at the Data Centers, Avue will supply alternate electrical power supply via uninterrupted power supply (UPS) and generator facilities.

6.4.6 Avue will be responsible for performing disk, CPU, and memory threshold monitoring, configurations, and tuning at the Data Centers.

6.4.7 Avue will be responsible for performing daily operational functions at the Data Centers.

6.5 Software Management. Avue will be responsible for the following Data Center functions:

6.5.1 Maintaining software version/release control for the development, test, and production ADS environments  
6.5.2 Providing software version testing and implementation processes and procedures.  
6.5.3 Providing application and system-level software release upgrades.

6.6 System Backup and Recovery

6.6.1 Avue will be responsible for providing an integrated backup strategy including daily, weekly, and monthly backups. Unless otherwise specified in this Agreement, the backup schedule will be as follows:

(a) Weekly full system backups  
(b) Daily incremental backups (any items changed since the last full backup)  
(c) Monthly full system off-site backups

6.6.2 Avue will retain system backup media for the duration specified below:

(a) Daily data backup media will be retained for 21 days after the backup is performed. Backup media will be recycled after 21 days.  
(b) Weekly data backup media will be retained for 10 weeks after the backup is performed. Backup media will be recycled after 10 weeks.  
(c) Monthly data backup media will be retained for 12 months after the backup is performed. Backup media will be recycled after 12 months.  
(d) Yearly data backup media will be retained for 3 years after the backup is performed.

6.6.3 Avue will store backup media off-site for all daily, weekly, monthly, and yearly backups as per the above media-recycling schedule.

6.7 Automated Monitored Computer Operations Environment. Avue will be responsible for performing Computer Operations Environment monitoring on a 7 X 24 basis.
6.8 Security

6.8.1 Avue, in cooperation with Subscriber, will be responsible for issuing user IDs, passwords and application access permissions by user id for the Subscriber’s authorized users.

6.8.2 Avue will be responsible for ensuring that the SSL authentication server within the Extranet Data Center accepts only secure (SSL) traffic.

6.8.3 Avue will be responsible for enforcing restricted access based on the user IDs, passwords, and permissions created and maintained by Avue in cooperation with Subscriber.

6.8.4 Physical security: Avue will be responsible for ensuring appropriate security controls and access to the Extranet Data Centers.

6.9 24 X 7 Emergency On-Call Service

6.9.1 Avue will be responsible for responding to and resolving, on a 7 x 24-hour basis, service outages.

6.9.2 Avue will be responsible for maintaining 7 x 24-hour coverage on all critical hardware components within the Data Center.

6.10 Change Management

6.10.1 Individualized, position-specific data modifications (e.g., editing of duty descriptions, KSA’s, crediting plan criteria) are the responsibility of the Subscriber. The Subscriber may use ADS-provided editing functionality to edit and change position-specific content, as needed.

6.10.2 Avue will be responsible for administering changes to the content database. The Subscriber will be responsible for initiating and registering change requests, and Avue will respond to Subscriber change requests within two business days of receipt.

6.10.3 Avue will be responsible for notifying and obtaining Subscriber cooperation on any changes to the ADS environment (e.g., hardware upgrades, operating system upgrades, Oracle release changes, etc.) that will potentially impact the Subscriber’s environment.

6.11 Call Center. Avue will be responsible for maintaining a centralized telephone support service to receive, log, track, and escalate all Extranet Data Center related problems for the ADS environment on a 24 x 7 x 365 basis.

6.12 Archiving

6.12.1 Data. Subscriber shall have the right, at any time during or at the conclusion of the Subscription Period, to transmit in a searchable and readable digital form any Client Data and Government Data (each as defined in Section 5 of the MSA) to (a) other Subscriber systems (e.g., agency data warehouse); (b) third party federal systems (e.g., EmpowHR or NFC), and (c) non-governmental systems (e.g., Amazon Web Services, including its “Glacier” long-term storage capability). Transmittal shall be through an Avue-authorized data interface. All costs of data transmittal, storage, and use shall be the responsibility of Subscriber.

6.12.2 Artifact Images. In addition to the rights of Subscriber under Subsection 6.12.1, Avue will maintain and provide Subscriber access to an online read-only PDF archive of all of the relevant document images ("archival documents") associated with Subscriber’s use of the Subscribed ADS Modules. Subject to the provisions of Sections 5 and 14 of the MSA, the right of archive access includes the ability to print archival documents. Avue’s obligations under this subsection shall continue for five years after the subscription period ends for any reason, and at no additional charge. For purposes of this subsection 6.12.2 the archival documents include:

(a) Regarding position classification matters, position description, performance plan, evaluation statement, and job analysis worksheet;

(b) For recruitment and staffing matters, all staffing-related documents that are needed to support audit, review, or reconstruction of staffing actions under (1) Delegated Examining Unit (DEU) audit (whether by OPM or sanctioned audits); (2) litigation hold; and (3) similar purposes. The archival documents shall include, without limitation, vacancy announcement, questionnaire, candidate review actions, applications, referral lists, and audited certificate. Upon request and for a reasonable consulting fee, Avue shall assist the Subscriber with document review and analysis in preparation for audits;

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(c) Concerning performance management matters, all position descriptions, performance plans, appraisals and associated documentation used to support them including that submitted by employees, managers, approving officials or other individuals providing input for consideration in the appraisal.

(d) For any other human capital management matter, all appropriate documentation for the subject matter, of a kind and quality like the archival documents specified above for classification, staffing, and performance management.

6.12.3 All Avue Archive documents shall contain the following notice --

"The rights to data contained in this archive are subject to the governing provisions of the contract under which it is produced, including the Avue Digital Services® Master Subscription Agreement."

6.13 Data and Database Administration

6.13.1 Avue is responsible for the integrity of the data associated with the Subscribed ADS Modules.

6.13.2 Avue is responsible for the management of the database instances for development, test, and production.

6.13.3 The Subscriber is responsible for the creation of data input standards to achieve data consistency for the Subscriber's use in searching and analysis. The Subscriber will be responsible for the corrections to the data where data standards have not been applied (for example, vacancy announcement numbers, position description numbers, geographic location designations, organizational codes, and similar data fields).

6.13.4 Avue, in cooperation with the Subscriber, is responsible for the following:

(a) Establish and maintain agency profiles, including user roles, agency hiring authorities and priorities, and agency referral list generation set-up.
(b) Administer role-defined access to product functions.
(c) Administer agency emails, including list generation and administration, notification text editing, and event routing.

6.14 Technical Environment

6.14.1 Web Browsers: Access to the Subscribed ADS Modules will be provided for users, connected to the Internet utilizing a supported Web browser as approved by Avue. Notwithstanding the preceding, Avue shall not be held responsible or liable for any errors or defects caused by or contained in any third-party Web browser.

6.14.2 Security: Security will be provided for Subscriber users, using authentication servers, Firewalls, encryption technologies, and directory services. Encryption and authentication will be provided utilizing Secure Socket Layer (SSL).

7.0 Supplemental or Incidental Services

The Subscriber may request that Avue perform supplemental or incidental services that relate to the Subscribed Services. Such services include Avue’s offering of consulting and other services on an hourly basis and production of HR documents on an hourly or per-piece basis, whether under a contract also providing for subscription services or under a separate contract. Each work request for such additional services shall describe the services sought and, if applicable, the requested date of completion. All such work requests are subject to written acceptance by Avue.

8.0 Subscriber Obligations

The Subscriber shall carry out all of the Subscriber’s responsibilities outlined in this Agreement, including its Attachments. Whether or not explicitly stated, the Subscriber will provide Avue with full, good faith cooperation, assistance, and information as may be requested by Avue from time to time to deploy the Subscribed Services throughout the Subscriber. For Subscribers purchasing a module that relies on payroll data, Subscriber agrees explicitly to cooperate with Avue to establish a full bi-directional interface between the Avue system and the payroll system used by Subscriber.

9.0 Level of Performance

9.1. Definitions: For purposes of this Section 9.0, the following terms will have the meanings given:

9.1.1. "Service Availability" means the uptime of the Extranet Data Center and the relevant applications.

9.1.2. "Hours of Operation" means 2060 hours per quarter calendar year, calculated as follows: 7x24 for 365 days divided by 4 quarters per year less: (a) six daily maintenance and backup as required not to exceed one hour per day between 12 AM and
1AM (EST) and (b) one weekly maintenance and backup as required not to exceed one four-hour period occurring from Saturday midnight to 4AM (EST) Sunday morning. "Performance Standard" means 95% of the Hours of Operation, i.e., 1957 hours per calendar quarter.

9.1.3. "Service Accessibility" means the ability for the Covered Subscriber Community to access the Subscribed ADS Modules from the following locations: within the Subscriber intranet environment; from Subscriber employee homes; and through general Internet access providers. Access from these locations is subject to meeting technical and security requirements.

9.2. Performance Availability and Service Accessibility. Ave will be responsible for maintaining Service Availability and Service Accessibility at a level not less than the Performance Standard.

9.3. Service Metrics

9.3.1. Ave will be responsible for the provision of Service Availability and Service Accessibility statistics monthly, as well as providing quarterly summary reports to the Subscriber. The monthly and quarterly statistics will reflect the number of actual hours of service delivered.

9.3.2. Any deficiency in achieving the Performance Standard in a quarter year may be subject to Service Credit, as defined and provided for in Section 9.4.

9.4. Service Credit

9.4.1. In the event that, on an aggregate basis within any given quarter of a year, Ave does not provide Service Availability and Service Accessibility for any Subscribed ADS Module at a level that is at least equal to the Performance Standard due to a failure within the Extranet Data Center, the Subscriber may deduct from the Subscription Fee one percent (1%) of the Subscription Fee for such Subscribed ADS Module, prorated with respect to such quarter, for each full one percent (1%) of the cumulative shortfall below the Performance Standard ("Service Credit").

9.4.2. Service Credit applied to Ave, will be subject to offset, pro rata, to the extent that Ave has provided service in excess of the Performance Standard, calculated on a rolling-average basis, during the preceding four quarters.

9.4.3. Service Credit, if any, may only be credited against the Subscriber's Subscription Fees, if any, next occurring for the affected Subscribed ADS Module(s).

9.4.4. The application of Service Credit will not apply in the event of a declared disaster where a business continuity plan is being executed, for the duration of the time required to relocate to the secondary data center. Also, the application of Service Credit shall be subject to the terms contained elsewhere in this Agreement, including without limitation Section 9.5, Section 14.0, and Section 17.2.

9.4.5. Any Service Credit determination will exclude the first quarter following the release of a new ADS module, or a revision of an existing Subscribed ADS Module that the Subscriber and Ave agree is significant.

9.5. Maximum Service Credits: Notwithstanding any other provision of this Agreement, the maximum Service Credit associated with a shortfall in Service Availability within a calendar quarter shall be five percent (5%) of the Subscription Fee for the affected Subscribed ADS Module, pro-rated for the calendar quarter.

9.6. Sole Remedy. Subscriber acknowledges and agrees that any Service Credit provided for under this Section 9 shall be the Subscriber’s sole remedy if there is any shortfall regarding Service Availability and Service Accessibility during the Subscription Period. This provision does not limit the government’s rights to terminate for convenience or cause under FAR 52.212-4(l) and (m).

10.0 Fees and Expenses

10.1. Enterprise Annual Subscriptions. For Enterprise Annual Subscriptions there shall be an Initialization Fee, an Annual Subscription Fee, and an Annual Extranet Fee for each ADS Module. Section 11 describes the invoicing and payment of the fees contained in Attachment 1.

10.2. Enterprise Monthly Subscriptions. For Enterprise Monthly Subscriptions, there shall be a single monthly Subscription Fee for each ADS Module that is in an amount stated in Attachment 1, and invoiced and payable consistent with Section 11.

10.3. Determination of Fees. For all Enterprise Subscriptions, the Covered Subscriber Community is determined per Section 4.0 of this Agreement.

10.4. Supplemental or Incidental Services. For any of the supplemental or incidental services described in Section 7, the Subscriber shall
pay at the specified rates agreed upon between the Subscriber and Avue at the time of order acceptance. The Subscriber shall be responsible for all actual, reasonable, out-of-pocket expenses incurred by Avue in performing the order. For government Subscribers, expense reimbursement shall be consistent with allowable costs under the applicable regulations.

11.0 **Acceptance, Invoicing and Payment Terms**

11.1 Avue shall not be required to initiate the Subscribed Services for any Subscription Period unless there is a procurement contract in place against which a valid purchase order for the Subscribed Services may be placed.

11.2 Subscriber’s acceptance of any Subscribed ADS Module shall be deemed to occur at the time of Avue’s first release of the Subscribed ADS Module for Subscriber’s use which will be deemed to occur at the time when Avue provides Subscriber with its first user accounts permitting access to the Avue production system.

11.3 With respect to Enterprise Annual Subscriptions:

11.3.1 Initialization Fees shall be invoiced commencing on the date the Subscribed ADS Modules are first released to the Subscriber. Payment is due upon receipt of invoice by the Subscriber.

11.3.2 Annual Subscription Fees shall be invoiced as follows:

(a) If the Subscriber has not elected to take advantage of the standard pre-payment discount Avue offers its customers, the Annual Subscription Fees shall be invoiced in twelve (12) monthly installments, commencing on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Each ensuing subscription renewal shall be invoiced, due and payable in the same manner. Payment is due upon receipt of invoice by the Subscriber. The fact that Annual Subscription Fees are paid monthly does not relieve the Subscriber of the full year subscription obligation to which such fees relate.

(b) If the Subscriber has elected to take advantage of the standard pre-payment discount Avue offers its customers, initial year Subscription Fees are invoiced in full on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Payment is due within thirty (30) days of receipt of invoice by the Subscriber. Each ensuing subscription renewal shall be invoiced, due and payable on the first day of the new subscription period.

11.3.3 Annual Extranet Fees are invoiced in twelve (12) monthly installments, commencing on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Payment is due within thirty (30) days of receipt of invoice by the Subscriber.

11.4 Concerning Enterprise Monthly Subscriptions, subscription fees shall be invoiced monthly commencing on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Payment is due upon receipt of invoice by the Subscriber.

11.5 Fees for new ADS modules are invoiced on the first day of the Subscription Period to which the fees relate. Payment is due upon receipt of invoice by the Subscriber.

11.6 For Government subscribers, payment of all Avue fees shall be per the Prompt Payment Act.

11.7 Each invoice for fees and expenses relating to supplemental or incidental services under Section 7 is due and payable within thirty (30) days after the invoice receipt date.

11.8 Any early termination of this Agreement shall not result in a refund or reduction of the fees for that portion of the Subscription Period so terminated.

11.9 If the Avue Subscription has been purchased through an approved Avue reseller, invoicing from, and payment to, the reseller for purposes of this Agreement shall be deemed to be from and to Avue.

12.0 **Subscriber Point of Contact.**

The Subscriber’s COTR or COR, as identified to Avue by Subscriber, will serve as the Subscriber’s primary point of contact with Avue for all technical purposes.

13.0 **Ownership and Use of Intellectual Property**

13.1 The Subscriber acknowledges that Avue and/or its licensors own all intellectual property rights relating to the ADS Material and the Subscribed Services, including but not limited to all patents, trademarks, copyrights, trade secret, and data rights in all such materials including such rights as embodied in all hardware, software, and data components and any associated documentation, and all
customizations, developments, derivative works, and outputs. The parties agree that, except as stated herein, this Agreement does not grant the Subscriber any rights to patents, copyrights, trade secrets, trade names, trademarks (whether registered or unregistered), data or any other rights or licenses in respect of the Subscribed Services or the ADS Materials. Upon termination of the Subscription Period and except as explicitly permitted under section 5.6, the Subscriber agrees to return any Avue intellectual property in its possession, including but not limited to ADS Material and Avue copyrighted material, within 30 days of Avue's written request.

13.2. The ADS Material embodies information that is confidential and proprietary to Avue and its licensors. Also, but not in limitation of the preceding, the Subscriber understands and agrees that the content databases of the ADS Materials include a data structure incorporating complex associations between data elements, that was created by Avue and which constitute or contain confidential information and trade secrets which are proprietary to Avue.

13.3. The Subscriber acknowledges that the Subscribed Services are purchased under the name Avue Digital Services, ADS, and the various individual module names designated by Avue. Subscriber agrees that it will only use Avue Digital Services, ADS, and the applicable module names when referring to the Subscribed Services, whether for internal use or external reference, and will not re-name, or otherwise refer to the Subscribed Services. Subscriber shall not use Avue, Avue Digital Services, ADS, or other Avue intellectual property in connection with any internal or external communications, presentation or marketing material without the Avue’s review and express written consent.

14.0 Warranties and Disclaimers

14.1. Warranty and Disclaimer. The ADS Material, including all software and data used to provide access to Subscribed ADS Modules, are protected by copyright laws and international copyright treaties, as well as other intellectual property laws. Avue warrants that it has sufficient rights to provide access to the ADS Material in accordance with this Agreement. However, due to the complex nature of software and digital services, Avue does not warrant that the ADS Materials are completely error-free, will operate without interruption, are compatible with all equipment and software configurations, or will otherwise meet the Subscriber’s needs. AVUE DOES NOT MAKE, AND HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY TRADE USAGE OR COURSE OF DEALING, INCLUDING WITH OUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, AND NONINFRINGEMENT.

14.2. The Subscriber assumes sole responsibility for results obtained from the use of any ADS Material and for conclusions drawn therefrom, except to the extent damage results from Avue’s failure to exercise a reasonable standard of care in providing the ADS Material. Avue shall not be responsible for loss, destruction, alteration, or disclosure to any person of the Subscriber’s data submitted by the Subscriber or resultant output thereof (or loss, destruction, alteration or disclosure to any person of any physical media on which such the Subscriber data or resultant output are stored), unless caused by Avue’s negligence or willful misconduct. Furthermore, Avue shall have no liability for any errors or omissions in any information, instructions, or scripts provided to Avue by the Subscriber in connection with the services provided hereunder.

14.3. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR REVENUE, LOST SAVINGS, LOSS OF USE OF THE SUBSCRIBED ADS MODULES OR ANY COMPONENT OF SUBPART THEREOF, BUSINESS INTERRUPTION, OR COST OF SUBSTITUTED FACILITIES, EQUIPMENT OR SERVICES, OR OTHER ECONOMIC LOSS ARISING OUT OF BREACH BY THE OTHER PARTY OF ANY OF ITS REPRESENTATIONS, WARRANTIES OR AGREEMENTS CONTAINED IN THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 41 U.S.C. §§ 3729-3733. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 41 U.S.C. §§3729-3733. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE OR FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY APPLICABLE LAW.

14.4. DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD PARTIES: AVUE DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE DATA CENTER AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER’S CONNECTIONS TO THE INTERNET OR PORTIONS THEREOF. ALTHOUGH AVUE WILL USE COMMERCIAL REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, AVUE CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, AVUE DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS, INCLUDING WITHOUT LIMITATION ANY SERVICE ACCESSIBILITY AND SERVICE AVAILABILITY SHORTFALL RESULTING FROM IN WHOLE OR IN PART FROM SUCH EVENTS.
15.0 Technical and Security Requirements

15.1 General

15.1.1 All Avue services provided are included in the Avue subscription, eliminating the need for Subscriber to support the services by creating, staffing, and maintaining its own IT infrastructure.

15.1.2 Avue shall provide user access with redundant design and unlimited access, including at least two availability zones. Avue will not restrict bandwidth to the Avue system. Avue's system shall be accessible by Subscriber users and applicants via the Internet and support multiple browsers, including Internet Explorer, Firefox, and Chrome on both PCs and mobile devices. Avue shall provide guaranteed 95% or better availability to Avue's system for all users. Avue's system shall support a secure, multi-factor method of remote authentication and authorization to perform management duties on the system.

15.1.3 Avue will provide 24/7/365 Tier 1, 2, and 3 Help Desk services for Subscriber users and applicants with support personnel who are U.S. citizens only.

15.1.4 Avue will use only cryptographic mechanisms that are FIPS 140-2 validated. Avue shall provide security mechanisms for handling data at rest and in transit in accordance with FIPS 140-2.

15.1.5 Avue shall support a system in accordance with the requirement for Federal agencies to manage their electronic records in accordance with 36 CFR § 1236.20 & 1236.22, including but not limited to capabilities such as those identified in NARA Bulletin 2010-05 September 08, 2010, Guidance on Managing Records in Cloud Computing Environments.

15.2 Security Alerts, Advisories, and Directives

15.2.1 Avue shall provide a list of its personnel, identified by name and role, with system administration, monitoring, and/or security responsibilities that are to receive security alerts, advisories, and directives. This list shall include designated Subscriber personnel, including the Subscriber SOC and the SAOP.

15.2.2 Avue (and/or any of its subcontractors) shall report all suspected and confirmed information security and privacy incidents to the Subscriber Security Operations Center (SOC) via email and telephone to the designated Subscriber representatives, COR, Contract Officer, SAOP (or his or her designee), and other stakeholders, including incidents involving personally identifiable information (PII), in electronic or physical form, within 1 hour of discovery. The types of information required in an incident report must include at a minimum company and point of contact information, impact classifications/threat vector, and the type of information compromised.

15.3 Section 508 Compliance. All electronic and information technology (EIT) provided by Avue shall meet the applicable accessibility standards at 36 CFR 1194 unless an agency exception to this requirement exists.

15.4 FedRAMP Security Requirements

15.4.1 General. The minimum requirements for low and moderate impact cloud systems are contained within the FedRAMP Cloud Computing Security Requirements Baseline. Avue and the Subscriber share responsibility to ensure compliance with security requirements through a formal process, known as Assessment and Authorization, which provides guidelines for performing the assessment.

15.4.2 Avue shall provide a Software as a Service ("SaaS") platform hosted in a FedRAMP-authorized cloud infrastructure based on NIST Special Publication 800-53, Revision 4. Avue shall identify all data centers that the data at rest or data backup will reside. All data centers will be guaranteed to reside within the United States of America and be authorized under FedRAMP at the time of award. Avue shall implement the controls contained within the FedRAMP Cloud Computing Security Requirements Baseline and FedRAMP Continuous Monitoring Requirements for low and moderate impact systems (as defined in FIPS 199). Avue shall generally, substantially, and in good faith follow FedRAMP guidelines and Security guidance. In situations where there are no procedural guides, Avue shall use generally accepted industry best practices for IT security.

15.4.3 Upon 30-days prior written notice to Avue and an opportunity to cure, Subscriber may choose to cancel its Avue subscription and terminate any outstanding orders if Avue's FedRAMP provisional authorization is revoked and the deficiencies are greater than agency risk tolerance thresholds.

15.4.4 Assessment of the System

(a) Avue shall comply with FedRAMP requirements as mandated by Federal laws and policies, including making available any documentation, physical access, and logical access needed to support this requirement. Avue shall create, maintain,
and update the following documentation using FedRAMP requirements and templates, which are available at http://fedramp.gov:
- Privacy Impact Assessment (PIA)
- FedRAMP Test Procedures and Results
- Security Assessment Report (SAR)
- System Security Plan (SSP)
- IT System Contingency Plan (CP)
- IT System Contingency Plan (CP) Test Results
- Plan of Action and Milestones (POA&M)
- Continuous Monitoring Plan (CMP)
- FedRAMP Control Tailoring Workbook
- Control Implementation Summary Table
- Results of Penetration Testing
- Software Code Review
- Interconnection Agreements/Service Level Agreements/Memorandum of Agreements

(b) Avue’s system will be assessed by an accredited 3PAO whenever there is a significant change to the system’s security posture in accordance with the FedRAMP Continuous Monitoring Plan.

c) The Subscriber reserves the right to perform Penetration Testing. If the Subscriber exercises this right, Avue shall allow Subscriber employees (or designated third parties) to conduct Security Assessment activities to include control reviews in accordance with FedRAMP requirements. Review activities include but are not limited to scanning operating systems, web applications, wireless scanning; network device scanning to include routers, switches, and firewall, and IDS/IPS; databases and other applicable systems, including general support structure, that support the processing, transportation, storage, or security of Subscriber information for vulnerabilities.

d) Any Identified gaps between required FedRAMP Security Control Baselines and continuous Monitoring controls and Avue’s implementation as documented in the Security Assessment Report shall be tracked by Avue for mitigation in a Plan of Action and Milestones (POA&M) document. Depending on the severity of the gaps, the Subscriber may require them to be remediated before a provisional authorization is issued.

e) Avue is responsible for mitigating all security risks found during A&A and continuous monitoring activities. “All high-risk vulnerabilities must be mitigated within 30 days, and all moderate risk vulnerabilities must be mitigated within 30 days from the date vulnerabilities are formally identified. The Subscriber will determine the risk rating of vulnerabilities.”

15.5 Authorization of System. Avue shall provide access to the Subscriber, or its designee acting as its agent, when requested, to verify Compliance with the requirements for an Information Technology security program. The Subscriber reserves the right to conduct on-site inspections. Avue shall make appropriate personnel available for interviews and provide all necessary documentation during this review.

15.6 Reporting and Continuous Monitoring. Maintenance of the FedRAMP Provisional Authorization will be through continuous monitoring and periodic audit of the operational controls within Avue’s system, environment, and processes to determine if the security controls in the Avue system continue to be effective over time given changes that occur in the system and environment. Through continuous monitoring, Avue will submit updated security controls and supporting deliverables to the FedRAMP PMO as required by FedRAMP Requirements.

16.0 Additional Terms and Conditions

If certain “premium” features (e.g., where proprietary third-party data access requires payment of a fee) are made available to Subscriber, the Subscriber will be given written notice of all applicable terms and conditions, including charges, which are different from those stated in this Agreement ("Additional Terms"). Subscriber will not be given access to such “premium” features without reviewing and accepting the Additional Terms, but once accepted, Subscriber agrees to and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms once reviewed by Subscriber will be considered part of this Agreement.

17.0 General

17.1 Notices: Any notice or request hereunder shall be made in writing, delivered in person to an authorized officer of the respective party, sent by first-class mail or reputable express courier (postage or charges prepaid) or transmitted by email or confirmed facsimile to the other party at its address stated at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Any notices, demands or other communications required or permitted hereunder shall be deemed given when hand delivered or transmitted by email or confirmed facsimile, on the next business day after being sent by overnight express courier (charges prepaid), or three (3) days after being deposited in the United States mail, postage prepaid.
17.2. *Force Majeure:* Excusable delays shall be governed by FAR 52.212-4(f).

17.3. *Severability:* If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

17.4. *Section Headings:* The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

17.5. *Waiver:* The failure by a party to exercise any right hereunder shall not operate as a waiver of such party’s right to exercise such right or any other right in the future.

17.6. *Dispute Resolution:* If a dispute regarding the interpretation or enforcement of this Agreement arises, the senior executive officers of the parties will promptly meet to seek to resolve the dispute. If the dispute is not then resolved, the parties shall have recourse to all available legal and equitable remedies in accordance with the Contract Disputes Act.

17.7 *Counterparts and Electronic Signatures:* The Parties may execute this Agreement and any document executed between them attached to it or arises from it, in several counterparts, all of which taken together shall constitute one single agreement. Signatures may be made and delivered electronically. It shall not be necessary in making proof of this Agreement to produce original signature page(s) to this Agreement.

IN THE EVENT THIS AGREEMENT IS INCORPORATED INTO A GOVERNMENTAL CONTRACT AWARD, EXECUTION BY THE PARTIES IS NOT NECESSARY.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this Agreement, effective as of the date first written above.

**SUBSCRIBER**

By: ________________________
Name: ______________________
Title: ______________________

**AVUE TECHNOLOGIES CORPORATION**

By: ________________________
Name: ______________________
Title: ______________________

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Name of the Subscriber: [Client Agency]

Type of Subscription (Annual/Monthly): Enterprise Annual

Covered Subscriber Community (CSC)

In contrast to traditional client-server software “usage pricing” models that determine permitted user access and price based on the number of user seats or licenses-server era, Avue uses a subscription model more appropriate for Cloud-based, Software-as-a-Service (SaaS) offerings. Specifically, permitted user access and price are determined by coverage group size rather than usage. In fact, Avue’s service allows for unlimited concurrent users that fall within a delineated group’s processes. For example, an agency’s recruitment and hiring processes involve applicants, employees, supervisors, managers, senior leaders, and even background investigators.

To eliminate any potential confusion between legacy per-seat software offerings versus Avue’s subscription-based holistic SaaS model Avue has adopted the term “Covered Subscriber Community” (CSC) to refer to the delineated group covered by the subscription. The CSC includes everyone that may have or will be given access to ADS and the processes, data, information, and analysis it provides. The Avue Indigo™ offering contains certain features and functionality designed to effectively manage the agency’s extended enterprise that includes non-employees – such as contractors – that need to be part of the CSC. With Avue’s consent, the CSC may also include other agencies or components “cross-serviced” by the Subscriber’s HCM operations.

As a baseline, the CSC is equal to the number of FTE specified in the Subscriber’s authorized fiscal year budget for the year in which the subscription period begins.

For certain circumstances and modules, the Subscriber may also cover its “Contingent Workforce” which are then included as a group in the Subscription Bracket number. “Contingent Workforce” consists of individuals that perform work on a basis that does not constitute employment, such as contractors, “gig economy workers,” and similar engagements.

Included Organizations for Subscription as of Effective Date:

- Subscriber: [Client Agency]
- CSC Size: [Bracket]

3. Current Module Activation Status

As part of the contract to which the Avue Master Subscription Agreement is incorporated, the Subscriber has subscribed to the entire Avue Digital Services® (ADS) offering (including modules that may be added from time to time during the contract period). As of the effective date of this Attachment 1, Master Subscription Agreement, the available Avue modules are collectively referred to as Avue Indigo™.
Pricing Grids for Subscriber: Summary Price Tables

Pricing Grids for Subscriber: Detailed Price Tables: See Next Page
### Avue Digital Services® Indigo by Avue® Platform Offering 2022

#### GROUP ONE

<table>
<thead>
<tr>
<th>Module</th>
<th>Acronym</th>
<th>Price Type</th>
<th>Brief Highlights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avue Operating System</td>
<td>AOS</td>
<td>C</td>
<td>The AOS base platform of Avue Digital Services® includes workflow, business process management, business activity monitoring, personnel action processing, tracking and reporting, data warehousing, online standard and ad hoc reporting, data analytics, dashboards; application program interfaces (APIs) to third party systems; interconnections with other federal systems; cybersecurity and FedRAMP and agency authorizations management, FedRAMP-authorized infrastructure; user and access management; HR collaboration platform; enterprise skills banks; and base platform for all Avue modules.</td>
</tr>
<tr>
<td>Position Classification &amp; Management</td>
<td>PCM</td>
<td>B</td>
<td>Job classification (including automatic FLSA and Comp Level Codes), position management, and dashboards. Covers 100% of all work performed in the Federal Government, including white and blue collar. Creates all positions in all types of pay plans, including pay banding, market-based pay, mixed series, mixed-grade, career ladder, supervision, lead, senior level, interdisciplinary, research, and trainee positions.</td>
</tr>
<tr>
<td>Recruitment, Retention &amp; Staffing</td>
<td>RRS</td>
<td>B</td>
<td>Complete end-to-end recruitment and staffing from announcement to filling (including USAJobs interface and all DEU), including EEO and off-boarding, specialty recruitment agency-specific websites, climate survey, exit survey, recruitment program management &amp; support. Automatically determines whether candidate meets basic qualifications. Automatically rates and ranks candidates, including applying Veterans' Preference and assessing and flagging applicants available through alternative hiring authorities. Automatic generation of referral lists and notifications to managers that referral lists are available (online) for candidate review, further assessment, and selection. Online reference checking and automatic generation of a behaviorally-based interview guide. Complete management and facilitation of supplemental candidate assessment (including background, medical, and physical) hub for all providers including candidate self-service appointment scheduling.</td>
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<tr>
<td>Strategic Competency Framework</td>
<td>SCF</td>
<td>C</td>
<td>SCF provides the “special sauce” enabling integration of each agency’s mission-specific competency framework with the core capabilities of the Indigo platform to form the innovative talent management strategy called Indigo Skillset™. SCF includes mission-based talent domains that serve as the meta-structure to align work roles and requirements to a specific mission focus. These talent domains contain: (1) The level of proficiency in skills required for a position as assigned by a mission knowledgeable SME to positions and people, (2) Mission-based aptitudes, capabilities, computer-fueled, expertise, behaviors, and skills that are required on entry into a position or must be acquired shortly after entry into a position, to do the work of the organization, and, (3) Specialized requirements unique to an organization or discipline or specialization within a talent domain’s competencies. Each position skills profile - which aligns the position with the work roles and workforce development plans or career path progression - defines the ongoing development plans and paths for each individual in the position.</td>
</tr>
<tr>
<td>Resource Allocation &amp; Management</td>
<td>RAM</td>
<td>C</td>
<td>Provides for team assembly, deployment, and coordination, including response to sudden or emerging situations and special needs circumstances such as taskforces, special projects, or interdisciplinary teams. Maintains inventory of key information for all employees, including detailed skills and competencies, geographic location and assigned official duty station, availability, clearances, certifications, etc. Using this module’s “Incident Accountability System” (IAS), track workforce location and status during an emergency event that prompts evacuation or similar circumstances.</td>
</tr>
<tr>
<td>Productivity, Operations &amp; Performance</td>
<td>POP</td>
<td>C</td>
<td>POP includes the full range of tools needed for a continuously evolving and innovative approach to business operations management and data-driven leadership. For individual performance, POP addresses the complete end-to-end performance management process, from performance plan creation to monitoring to evaluation and the final rating of record. In addition, POP provides automatic generation of plans, performance awards, PIP, etc., and online coaching for managers. For administrative business operations (finance, HR, IT, etc.) POP captures and generates reliable and accurate data and outcomes from operations and provides visibility, insight, and accountability to management through dashboards. In addition, POP includes Avue Service and Processing (ASAP) custom-configured workflows for any business processes that are not accurately tracked through other agency systems.</td>
</tr>
<tr>
<td>Enterprise Learning Management</td>
<td>ELM</td>
<td>C</td>
<td>Provides a comprehensive enterprise-class learning management system for employee development. Covers all aspects, including course development, self-service registration, automatic IOP generation, classroom logistics, budgetary support, financial payments/charges/credits, instructor assignment, and ratings. Includes interfaces to SCORM compliant content development systems and delivery of content.</td>
</tr>
<tr>
<td>Enterprise Strategic Planning</td>
<td>ESP</td>
<td>C</td>
<td>Assists line managers and staff professionals in analyzing the organization, employee demographics, competency/skill mix, payroll expenditures, and other workforce profiles to determine trends, identify labor market effects, conduct scenario planning, determine bench strength for succession planning, quantify the costs of organizational activities, and forecast the structure and needs of the organization in future years. Includes factoring in retirements, attrition, cycle time to fill positions, training costs, training capacity, and similar factors. Cost projections are provided across multiple years. Utilities workforce behavior profiles to project key events and the resulting future impact.</td>
</tr>
<tr>
<td>Advice, Coaching &amp; Claims (EOC, ERL/RICM)</td>
<td>ACC</td>
<td>B</td>
<td>Manager-centric solution for the entire range of ERL/EOC/ERL/ERI/ERICM. Practical guidance to all Participants (managers, ERL/EOC/ERICM professionals, and practitioners, EEO practitioners, union representatives, investigators, mediators, and employees). Includes online coaching, agency policy lookup, situation analysis, and Douglas Factor Analysis. Complete case management for all Participants – routing, workflow, counseling, investigation, adjudication, case management, tracking, and archival of cases and reports at both the formal and informal stages. Automatic updates for all Participants regarding the status of cases. Automatic generation of all required reports, including EEOC MD-715, 462, and “NO FEAR.” Handles virtually all FECA claims. EDI interchange with DOL and automatic generation of all forms. Includes the ability to automatically generate appropriate light duty positions and other tools to increase “return to work” success.</td>
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<tr>
<td>Avue Time &amp; Leave</td>
<td>ATL</td>
<td>C</td>
<td>Automates 100% of pay rules and centralizes zero-to-gross pay functionality for even the most complex agency operations. Sophisticated features including retroactive adjustments, labor and production metrics, real-time rules processing. Unlimited number of accounts can be used. ATL maintains an attendance history by employee and provides reports and notifications of violations based on an organization’s settings. Incorporates an unlimited number of warning periods, thresholds, and attendance groups while and maintaining detailed histories. ATL also includes complete leave management functionality that enables an organization to manage and track leave requested by employees.</td>
</tr>
<tr>
<td>Avue Workforce Scheduling</td>
<td>AWS</td>
<td>C</td>
<td>Automates schedule management for organizations with teams of employees who perform shift work. Reduces the time a manager needs to spend ensuring schedules are filled with qualified employees based on the demands for the day. Uses &quot;humping&quot; to automatically fill schedules with employees based on their shift patterns, job qualifications or employee rankings. Also assists managers in performing other daily staffing requirements including booking employees off, finding replacements to meet qualification and overtime rules and performing mass changes quickly and easily. Seamlessly integrated with ATP ensuring that all time scheduled can be easily tracked against actual employee time.</td>
</tr>
<tr>
<td>Payroll Service Processing</td>
<td>PSP</td>
<td>Transactional</td>
<td>Avue Payroll Service Processing is provided by Avue in combination with ADP, one of the largest payroll and tax filing processors in the world, serving about 225,000 clients. Its primary business is providing employee services (payroll processing, tax and benefits administration services). By taking Avue's capabilities and expertise in federal government rules and regulations and combining it with ADP's state-of-the-art payroll and tax filing services, including ADP's particularly strong capabilities in U. mobile devices, and dashboards, the Team Avue PSP offering for federal government agencies substantially surpasses any prior federal sector offering.</td>
</tr>
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13. Encryption Notice. The Software may utilize encryption technology. You agree that encryption is not a guarantee of confidentiality and that Keysight is not liable for any breach of confidentiality that may occur as a result of decryption by a third party.

14. Audit. Upon reasonable notice, Keysight or its agents may, at Keysight’s expense, inspect your facilities (including computers, instruments, and machines) and records to verify your proper use and payment for the Software. You will keep records regarding your use in sufficient detail to permit this verification. If your payment is determined by usage of the Software, you also will provide Keysight with remote and on-site access subject to Government security requirements to your network and on-site access to your records, as is reasonably necessary to conduct a proper audit. If, after an audit, it is determined that you have underpaid any amounts due, Keysight will invoice you for and you agree to pay the amount of the underpayment, plus interest, in accordance with the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315, from the date payment was due. If you are a U.S. government customer, only Keysight employees authorized to access U.S. government facilities and computer systems may conduct such audit and any amount due under this Section 14 is subject to the U.S. Anti-Deficiency Act.

15. U.S. Government Rights. The Software is “commercial computer software,” as defined by Federal Acquisition Regulation (FAR) 2.101 (“Definitions”). Pursuant to FAR 12.211 (“Technical data”), 12.212 (“Computer software”) and 27.405-3 (“Commercial computer software”), the U.S. government acquires commercial computer software and computer software documentation and other technical data such as manuals under the same terms by which the software is customarily provided to the public. Accordingly, Keysight provides the Software to U.S. government customers under its standard commercial license, which is embodied in this EULA. The license set forth in this EULA represents the exclusive authority by which the U.S. government may use, modify, distribute, or disclose the Software. This EULA and the license set forth herein, does not require or permit, among other things, that Keysight: (1) furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or (2) relinquish to, or otherwise provide, the U.S. government rights in excess of these rights customarily provided to the public to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation. If you are a U.S. government customer, you acknowledge that you have reviewed the Software and this EULA, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), and agree that the license provided for herein is consistent with federal law and otherwise satisfies U.S. government needs. If you are a U.S. government customer, you agree that this EULA reflects the entirety of the terms of Keysight’s customary commercial license applicable to U.S. government customers. No additional government requirements beyond those set forth in this EULA shall apply, except to the extent that those terms, rights, or licenses are explicitly required from all providers of commercial computer software pursuant to the FAR and the DFARS and are set forth specifically in writing elsewhere in this EULA. Keysight shall be under no obligation to update, revise, or otherwise modify the Software. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software or technical data under this EULA.

16. WARRANTY. KEYSIGHT WARRANTS THAT THE SOFTWARE WILL, FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING TO THE EXTENT ALLOWED BY APPLICABLE MANDATORY LAW, AND EXCEPT TO THE EXTENT KEYSIGHT HAS PROVIDED A SPECIFIC WRITTEN WARRANTY APPLICABLE TO THE SOFTWARE, THE SOFTWARE IS PROVIDED TO YOU “AS IS” WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. KEYSIGHT, ON BEHALF OF ITSELF, ITS SUBSIDIARIES, AFFILIATES, AND SUPPLIERS, SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. SHOULD THE SOFTWARE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE RISK AND COST RESULTING FROM OR RELATING TO THE DEFECT.

17. LIMITATION OF LIABILITY. TO THE EXTENT ALLOWED BY APPLICABLE MANDATORY LAW, IN NO EVENT WILL KEYSIGHT, ITS SUBSIDIARIES, AFFILIATES, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES (INCLUDING DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, OR LOST PROFITS) REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY, OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR USE OF THE SOFTWARE IS ENTIRELY AT YOUR OWN RISK. NOTWITHSTANDING THE FOREGOING, IF THE SOFTWARE IS PROVIDED TO YOU AT NO CHARGE, KEYSIGHT, ITS SUBSIDIARIES, AFFILIATES, AND SUPPLIERS WILL NOT BE LIABLE FOR DIRECT DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

18. Applicable Law; Jurisdiction and Venue. Disputes arising in connection with this EULA will be governed by, construed, and interpreted according to the federal laws of the United States. The United Nations Convention for Contracts for the International Sale of Goods will not apply to this EULA.


20. Unenforceability. To the extent that any provision of this EULA is determined to be illegal or unenforceable, the remainder of this EULA will remain in full force and effect.

21. Entire Agreement. Certain program, data, and license files in the Software may be subject to supplemental license terms found in the documentation associated with the Software or directly in the files to which the supplemental terms apply. This EULA constitutes the entire agreement between you and Keysight with respect to the Software, and supersedes any previous communications, representations, or agreements, whether oral or written, except if you have a separate written, executed agreement with Keysight and the terms of such agreement conflict with the terms contained herein, in which case the terms of such agreement apply and take precedence. This EULA may not be changed except by an amendment signed by you and Keysight’s authorized representative.
Everbridge, Inc.
GSA Approved End User License Agreement

This End User License Agreement ("Agreement") is entered into by and between Everbridge, Inc. ("Everbridge") and an Ordering Activity, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2H, as may be revised from time to time ("Customer"), effective on the date of signature by an authorized signatory on the Quote or other ordering document ("Effective Date"). Everbridge and Customer are each hereinafter sometimes referred to as a "Party" and collectively, the "Parties."

1. SERVICE.

11 Orders. Everbridge shall provide Customer access to its proprietary interactive communication solutions (the "Solutions") subject to the terms and conditions set forth in this Agreement and the description of services and pricing provided in the applicable quote (the "Quote"). If applicable, Everbridge shall provide the training and professional services set forth in the Quote. Collectively, the Solutions and professional services are referred to as the "Services". Everbridge shall provide Customer with login and password information for each User (as defined below) and will configure the Solution to contact the maximum number of Contacts (as defined below) or Users, as applicable depending on the Solutions ordered. Unless otherwise provided in the applicable Quote or documentation, Services are purchased as annual subscriptions.

12 Users; Contacts. "Users" are individuals who are authorized by Client from time to time to use the Solutions for the purposes of sending notifications, configuring templates, reporting or managing data, serving as system administrators, or performing similar functions, and who have been supplied user identifications and passwords by Client. Users may include employees and contractors of Customer or an Included Department. "Included Department" means any enterprise department, office, agency, or other entity that receives a majority of its funding from the same general or enterprise fund, as applicable, as the Customer. "Contacts" are individuals who Customer contacts through the Solutions and/or who provides their personal contact information to Everbridge, including through an opt-in portal. If applicable to the particular Solution, the number of Users and/or Contacts that may be authorized by Customer is set forth on the Quote.

2. PAYMENT TERMS. Customer shall pay the fees set forth in the Quote ("Pricing"). All pricing must be consistent with the Schedule Price List. If Customer exceeds the usage levels specified in the Quote, then Everbridge may invoice Customer for any overages at rates consistent with the Schedule Price List. Professional Services must be used within 12 months from date of purchase.

3. RESPONSIBILITIES.

31 Users. Customer shall undergo the initial setup and training as set forth in the Implementation – Standard inclusion sheet provided with the Quote. The Implementation sheet provides a detailed list of the services included as part of the implementation purchased and the corresponding timelines. Customer shall be responsible for: (i) ensuring that Users maintain the confidentiality of all User login and password information; (ii) ensuring that Users use the Services in accordance with all applicable laws and regulations, including those relating to use of personal information; (iii) any breach of the terms of this Agreement by any User; and (iv) all communications by Users using the Solutions. Customer shall promptly notify Everbridge if it becomes aware of any User action or omission that would constitute a breach or violation of this Agreement.

32 Customer Data. "Customer Data" is all electronic data transmitted to Everbridge in connection with the use of the Solutions, including data submitted by Contacts. Customer Data provided by Customer shall be true, accurate, current and complete, and shall be in a form and format specified by Everbridge. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer represents that it has the right to authorize and hereby does authorize Everbridge and its "Service Providers" to collect, store and process Customer Data subject to the terms of this Agreement. "Service Providers" shall mean communications carriers, data centers, collocation and hosting services providers, and content and data management providers that Everbridge uses in providing the Solutions. Customer shall maintain a copy of all Customer Contact data that it provides to Everbridge. Customer acknowledges that the Solutions are a passive conduit for the transmission of Customer Data and Everbridge shall have no liability for any errors or omissions or for any defamatory, libelous, offensive or otherwise objectionable or unlawful content in any Customer Data, or for any losses, damages, claims, suits or other actions arising out of or in connection with any Customer Data sent, accessed, posted or otherwise transmitted via the Solutions.

4. TERM. This Agreement will commence on the Effective Date and will continue in full force and effect until all executed Quotes have terminated.

5. TERMINATION; SUSPENSION.

51 Termination by Either Party. [Intentionally Deleted]

52 Termination by Everbridge. [Intentionally Deleted]

53 Suspension. Everbridge may suspend, with or without notice, the Solution or any portion for (i) emergency network repairs, threats to, or actual breach of network security; or (ii) any legal, regulatory, or governmental prohibition affecting the Solution. In the event of a suspension, Everbridge shall use its best efforts to notify Customer through its Customer Portal and/or via email prior to such suspension and shall reactivate any affected portion of the Solution as soon as possible.

6. PROPRIETARY RIGHTS.

61 Grant of License. Everbridge hereby grants to Customer, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Solutions subject to the terms and conditions of this Agreement. Upon termination of this Agreement for any reason, the foregoing license shall terminate automatically and Customer shall discontinue all further use of the Solutions.

62 Restrictions. Customer shall use the Solutions solely for its internal business purposes and shall not make the Solutions available to, or use the Solutions for the benefit of, any third party except as expressly contemplated by this Agreement.

GSA End User License Agreement (based on MSAv6 1.29.17) 1
Customer shall not: (i) copy, modify, reverse engineer, decompile, disassemble or otherwise attempt to discover or replicate the computer source code and object code provided or used by Everbridge in connection with delivery of the Solutions (the "Software") or create derivative works based on the Software, the Solutions or any portion thereof; (ii) merge any of the foregoing with any third party software or services; (iii) use any Everbridge Confidential Information to create a product that competes with the Software; (iv) remove, obscure or alter any proprietary notices or labels on the Software or any portion of the Solutions; (v) create internet "links" to or from the Solutions, or "frame" or "mirror" any content forming part of the Solutions, other than on Customer's own intranet for its own internal business purposes; (vi) use, post, transmit or introduce any device, software or routine (including viruses, worms or other harmful code) which interferes or attempts to interfere with the operation of the Solutions; (vii) use the Solutions in violation of any applicable law or regulation; or (viii) access the Solutions for purposes of monitoring Solutions availability, performance or functionality, or for any other benchmarking or competitive purposes.

63 Reservation of Rights. Other than as expressly set forth in this Agreement, Everbridge grants to Customer no license or other rights in or to the Solutions, the Software or any other proprietary technology, material or information made available to Customer through the Solutions or otherwise in connection with this Agreement (collectively, the “Everbridge Technology”), and all such rights are hereby expressly reserved. Everbridge (or its licensors where applicable) owns all rights, title and interest in and to the Solutions, the Software and any Everbridge Technology, and all patent, copyright, trade secret and other intellectual property rights (“IP Rights”) therein, as well as (i) all feedback and other information (except for the Customer Data) provided to Everbridge by Users, Customer and Contacts, and (ii) all transactional, performance, derivative data and metadata generated in connection with the Solutions.

7. CONFIDENTIAL INFORMATION.

7.1 Definition; Protection. As used herein, “Confidential Information” means all information of a Party (“Disclosing Party”) disclosed to the other Party (“Receiving Party”), whether orally, electronically, in writing, or by inspection of tangible objects (including, without limitation, documents or prototypes), that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes without limitation, any personally identifiable Customer Data, all Everbridge Technology, and either Party’s business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose other than performance or enforcement of this Agreement without the Disclosing Party’s prior written consent, unless (but only to the extent) otherwise required by a governmental authority. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party except: (i) to the personnel of the Receiving Party or its parent, subsidiary or affiliate organizations having a need to know; or (ii) to the personnel of the Receiving Party’s consultants and service providers having a need to know, and only then if such consultants and service providers are bound by confidentiality and non-disclosure commitments substantially similar to those contained herein. Each Party agrees to protect the Confidential Information of the other Party with the same level of care that it uses to protect its own confidential information, but in no event less than a reasonable level of care.

8. WARRANTIES; DISCLAIMER.

8.1 Everbridge Warranty. Everbridge shall use commercially reasonable efforts to provide the Services herein contemplated. To the extent professional services are provided, Everbridge shall perform them in a professional manner consistent with industry standards.


8.3 Customer Representations and Warranties. Customer represents and warrants that during use of the Solutions, Customer shall (i) clearly and conspicuously notify Contacts of the way in which their personal information shall be used, and (ii) have primary safety and emergency response procedures including, without limitation, notifying 911 or equivalent fire, police, emergency medical and public health officials (collectively, "First Responders"). Customer acknowledges and agrees that Everbridge is not a First Responder, and that the Solutions does not serve as a substitute for Customer’s own emergency response plan, which in the event of a natural or potential imminent threat to person or property, shall include contacting a First Responder prior to using the Solutions. Customer represents and warrants that all notifications sent through the Solutions shall be sent by authorized Users, and that the collection, storage and processing of Customer Data, and the use of the Solutions, as provided in this Agreement, will at all times comply with (x) Customer’s own policies regarding privacy and protection of personal information; and (y) all applicable laws and regulations, including those related to processing, storage, use, disclosure, security, protection and handling of Customer Data.

9. INDEMNIFICATION.

9.1 By Customer. [Intentionally Deleted]

9.2 By Everbridge. Everbridge shall indemnify and hold Customer harmless from and against any Claim against Customer, but only to the extent it is based on a Claim that the Solution directly infringes an issued patent or other IP Right in a
country in which the Solution is provided to Customer. In the event Everbridge believes any Everbridge Technology is, or is likely to be the subject of an infringement claim, Everbridge shall have the option, at its own expense, to: (i) procure for Customer the right to continue using the Solution; (ii) replace same with a non-infringing service; (iii) modify such Solution so that it becomes non-infringing; or (iv) refund any fees paid to Everbridge and terminate this Agreement without further liability. Everbridge shall have no liability for any Claim arising out of (w) Customer Data or other Customer supplied content; (x) use of the Solution in combination with other products, equipment, software or data not supplied by Everbridge, (y) any use, reproduction, or distribution of any release of the Solution other than the most current release made available to Customer, or (z) any modification of the Solution by any person other than Everbridge.

93 Indemnification Process. Customer shall (a) promptly give notice of the Claim to Everbridge once the Claim is known; (b) cooperate with Everbridge’s efforts to defend and settle the Claim; and (c) provide Everbridge with all available information and reasonable assistance in connection with the defense of the Claim.

10. LIMITATION OF LIABILITY. Except for breaches of Section 8, neither Party shall have any liability to the other Party for any loss of use, interruption of business, lost profits, costs of substitute services, or for any other indirect, special, incidental, punitive, or consequential damages, however caused, under any theory of liability, and whether or not the Party has been advised of the possibility of such damage. Notwithstanding anything in this Agreement to the contrary, in no event shall Everbridge’s aggregate liability, regardless of whether any action or claim is based on warranty, contract, tort, indemnification or otherwise, exceed amounts actually paid by Customer to Everbridge hereunder during the 12 month period prior to the event giving rise to such liability. Customer understands and agrees that these liability limits reflect the allocation of risk between the Parties and are essential elements of the basis of the bargain, the absence of which would require substantially different economic terms. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute. Furthermore, this clause shall not impair nor prejudice the U.S. Government’s right to express remedies provided in the schedule contract (i.e., Price Reductions, Patent Indemnification, Liability for Injury or Damage, Price Adjustment, Failure to Provide Accurate Information).

11. MISCELLANEOUS.

11.1 Non-Solicitation. As additional protection for Everbridge’s proprietary information, for so long as this Agreement remains in effect, and for one year thereafter, Customer agrees that it shall not, directly or indirectly, solicit, hire or attempt to solicit any employees of Everbridge; provided, that a general solicitation to the public for employment is not prohibited under this section.

11.2 Force Majeure; Limitations. See GSA Schedule 70 contract and individual ordering document.

11.3 Waiver; Severability. The failure of either Party hereto to enforce at any time any of the provisions or terms of this Agreement shall in no way be considered to be a waiver of such provisions. If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted and the remaining provisions shall continue in full force and effect.

11.4 Assignment. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned (including an assignment by operation of law), or otherwise transferred, in whole or in part, by Customer, and any such attempted assignment shall be void and of no effect without the advance written consent of Everbridge, which shall not be unreasonably withheld.

11.5 Governing Law. This Agreement shall be governed and construed in accordance with the federal laws of the United States of America.

11.6 Notices. Either party may give notice at any time by any of the following: letter delivered by (i) nationally recognized overnight delivery service; (ii) first class postage prepaid mail; or (iii) certified or registered mail, (certified and first class mail deemed given following 2 business days after mailing) to the other party at the address set forth below. Either Party may change its address by giving notice as provided herein. Invoices shall be sent to the Customer’s contact and address following Customer’s signature below.

11.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

11.8 Entire Agreement. [Intentionally Deleted]

11.9 Marketing. Everbridge shall obtain Customer’s express written consent in order to reference Customer’s name and logo as an Everbridge customer in Everbridge publications, its website, and other marketing materials.

11.10 Survival. Sections 2, 3.2, 5.2, 6, 7, 9-11 and the applicable provisions of Exhibit A shall survive the expiration or earlier termination of this Agreement.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one original document. A facsimile transmission or copy of the original shall be as effective and enforceable as the original.

11.12 Export Compliant. Neither Party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

11.13 Equal Employment Opportunity. Everbridge, Inc. is a government contractor and is subject to the requirements of Executive Order 11246, the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), sections 60-250.4(a-m), sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-5) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement.
EXHIBIT A
Additional Business Terms

The following additional business terms are incorporated by reference into the Agreement as applicable based on the particular products and services described in the Customer’s Quote.

If Client is Ordering Nixle® Branded Products or Community Engagement:

1. Client grants to Everbridge a non-exclusive, royalty free, worldwide and perpetual right and license (including sublicense) to (a) use, copy, display, disseminate, publish, translate, reformat and create derivative works from communications Client sends through the Solutions for public facing communications to citizens, other public groups and public facing websites, including social media (e.g., Google®, Facebook®) (collectively, “Public Communications”), (b) use and display Client’s trademarks, service marks and logos, solely as part of the Public Communications to Contacts who have opted in to receive those Communications, and on other websites where Everbridge displays your Public Communications, as applicable, and (c) place a widget on Client’s website in order to drive Contact opt-in registrations.

If Client is Ordering Everbridge Branded Products:

1. Data Feeds. Notwithstanding anything to the contrary in this Agreement, to the extent that Customer has purchased or accesses Data Feeds, the sole and exclusive remedy for any failure, defect, or inability to access such Data Feed shall be to terminate the Data Feed with no further payments due. No refunds shall be granted with respect to such Data Feed. In addition, such feeds are provided solely on an “AS IS” and “AS AVAILABLE” basis and Everbridge disclaims any and all liability of any kind or nature resulting from any inaccuracies or failures with respect to such Data Feeds. “Data Feed” means data content licensed or provided by third parties to Everbridge and supplied to Customer in connection with the Solution (e.g., real-time weather system information and warnings, 911 data, third party maps, and situational intelligence).

2. Incident Management/IT Alerting. For Customers purchasing the Incident Management or IT Alerting Solution, unless designated as unlimited: (a) Customers may only designate the number of Users set forth on the Quote, and such individuals shall only have the access rights pursuant to such designation and role; (b) Incident Administrators shall have the ability to build incident templates, report on incidents, and launch incident notifications; (c) Incident Operators shall only have the ability to launch or manage incidents; (d) IT Alerting Users shall have the ability to build, launch or manage incidents as well as participate in an on-call schedule to receive IT outage notifications, and (e) Customer shall be provided the number of incident templates purchased pursuant to the Quote. “Incident Administrator” means an individual who is authorized by Client as an organizational administrator for the Incident Management or IT Alerting Solution. “Incident Operator” means an individual who is authorized by Client as an operator of the Incident Management or IT Alerting Solution.
EXHIBIT B

IPAWS-CMAS/WEA Addendum

This addendum is incorporated by reference into the Agreement as applicable based on the purchase of IPAWS-CMAS/WEA services on the Quote.

1. **IPAWS Authorization:** Client represents and warrants to Everbridge that any employee, agents, or representatives of Client who access IPAWS-OPEN using Client’s credentials provided by FEMA (each, an “IPAWS User”), are authorized by FEMA to use IPAWS-OPEN, have completed all required training, and Client has executed an IPAWS Memorandum of Agreement (“MOA”) with FEMA. Client shall contact Everbridge immediately upon any change in Client or any IPAWS User’s right to access IPAWS-OPEN. Client shall only access IPAWS-OPEN using its designated credentials and FEMA issued digital certificate (“Digital Certificate”). Client acknowledges and agrees that Everbridge shall not have access to its credentials and that Client assumes full responsibility for maintaining the confidentiality of any credentials issued to it.

2. **Credentials:** Client shall load and maintain within its Everbridge account Organization, its Digital Certificate, COG ID, and Common Name. Client authorizes and requests Everbridge to use the foregoing stored information to connect Client to IPAWS-OPEN.

3. **Messaging:** Client acknowledges and agrees that: (i) upon submission of messages to IPAWS-OPEN, Everbridge shall have no further liability for the distribution of such message, and that the distribution through IPAWS-OPEN, including, but not limited to, delivery through the Emergency Alert System or the Commercial Mobile Alert System, is in no way guaranteed or controlled by Everbridge; (ii) Everbridge shall not be liable as a result of any failure to receive messages distributed through IPAWS-OPEN; (iii) IPAWS may include additional features not supported through the Everbridge system, and Everbridge shall not be required to provide such additional features to Client; and (iv) Client shall be solely responsible and liable for the content of any and all messages sent through IPAWS-OPEN utilizing its access codes.

4. **Term:** Client acknowledges and agrees that access to IPAWS-OPEN shall be available once Client has provided Everbridge with the Digital Certificate and any other reasonably requested information to verify access to the system. Upon termination of the Agreement access to IPAWS-OPEN shall immediately terminate.
Master Services Agreement

This Master Services Agreement (this “Agreement”) is made and entered into as of the date set forth in the Purchase Order, or similar document, (the “Effective Date”) by and between FM:Systems Group, LLC, a Delaware limited liability company with an address at 2301 Sugar Bush Road, Suite 500, Raleigh, NC 27612 (“FM:Systems”), and the Government Customer (Agency) who, under GSA MAS Contracts, is the “Ordering Activity” which is defined as “an entity authorized to order under GSA Schedule Contracts” as defined in GSA Order OGP 4800.2I, as may be amended from time to time (“Client” or “Customer”).

The parties agree as follows:

1. Introduction. Under the terms of this Agreement, FM:Systems will provide Client with access and use of certain software (the “Software”) on a hosted basis over the Internet, as well as related services, all as described in the Purchase Order (“Software and Services”). The parties may from time to time agree to new Purchase Orders that identify additional Software and Services provided under the terms of this Agreement. Each Purchase Order, when executed by authorized personnel of each party, is a separate agreement that recognizes this Agreement and an addendum to the Multiple Award Schedule (MAS) Contract. In the event of a conflict between the terms of this Agreement and the MAS, the terms of the MAS shall control.

2. Your Responsibilities.

2.1 Client shall provide FM:Systems with access to Client’s technical personnel, facilities, databases, information and security clearance as necessary for FM:Systems to perform its obligations under this Agreement (including but not limited to the establishment of necessary access to Client’s databases).

2.2 Unless otherwise agreed in writing by the parties, Client shall have sole responsibility for acquiring, securing and maintaining its own technology environment, including but not limited to PC’s, operating systems, servers, Internet access, local area networks, and wide area networks.

2.3 FM:Systems may, in its sole discretion, deny or remove access to any user of the Software or Site (“User”) who fails to abide by the Acceptable Use Policy or who otherwise tampers with or abuses the Site or the Software.

3. Term and Termination.

3.1. The initial term of this Agreement shall begin on the Effective Date and continue for thirty-six (36) months after the Effective Date (the “Initial Term”).

3.2. Reserved.

3.3 Reserved.

3.4 The terms provided in Sections 10, 11, and 12 of this Agreement shall survive any termination of this Agreement.

4. Fees and Expenses.

4.1. Reserved.

4.2. Reserved.

4.3. Reserved.

5. Confidentiality.
5.1. "Confidential Information" means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by or on behalf of one party (a "Disclosing Party") to the other party (a "Receiving Party") pursuant to this Agreement. Confidential Information of FM:Systems includes, but is not limited to, the Software, as well as the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with such Software; the documentation thereto; and FM:Systems’ sales and training materials and procedures. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a Receiving Party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the Receiving Party as shown by its written records.

5.2. A Receiving Party agrees: (a) to hold the Disclosing Party’s Confidential Information in strict confidence; and (b) except as expressly authorized by this Agreement (including without limitation Section 12.1), not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information. In addition, without limiting the foregoing, FM:Systems agrees to use, and to require its contractors to use, reasonable procedures and mechanisms to maintain the security of and to prevent the unauthorized access to the computer systems on which Client’s Confidential Information resides. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information of the Disclosing Party as required by law or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure.

5.3. Reserved.

5.4. Upon the termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party all the Confidential Information delivered or disclosed to the Receiving Party, together with all copies in existence thereof at any time made by the Receiving Party. The provisions of this Section 5 shall survive any termination of this Agreement.
6. **Personnel.** The parties are and intend to be independent contractors with respect to the services contemplated hereunder. FM:Systems agrees that neither it, nor its employees nor its contractors shall be considered as having an employee status with Client. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.

7. **Services Support.** During the term of this Agreement, FM:Systems will provide support and maintenance services in accordance with Exhibits A and B, respectively, attached hereto and incorporated by reference.

8. **Equipment.** Equipment purchased pursuant to an Order Form is subject to the Hardware Terms and Conditions located at https://info.fmsystems.com/hubfs/Hardware-Terms-Conditions.pdf.

9. **Warranty.**

9.1. Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder. In addition, FM:Systems warrants that the Software will substantially conform to the documentation provided in connection with the Software. If it does not, at FM:Systems’ option, FM:Systems will either make it conform, replace it with conforming Software, or terminate the applicable Order Form and refund any Usage Fees for the Software at issue for the current period. This is the exclusive remedy for breach of the foregoing warranty.

9.2. FM:Systems does not warrant that the Software will operate uninterruptedly or error-free. Client is solely responsible for the accuracy and adequacy of the information and data furnished for processing with the Software. To the extent that data is being transmitted over the Internet hereunder, Client acknowledges that FM:Systems has no control over the functioning of the Internet and FM:Systems makes no representations or warranties of any kind regarding the performance of the Internet. The successful operation of the Software is dependent on Client’s use of proper procedures and systems and input of correct data.

9.3. FM:Systems warrants that any Implementation Services provided hereunder will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards, and according to the specifications agreed to by the parties at the beginning of the Implementation Services project. For any breach of the above warranty, Client’s exclusive remedy and FM:Systems’ entire liability will be the re-performance of the applicable Implementation Services.

9.4. Client shall be solely responsible for all decisions made using the Software, and that the Software is a tool to be used in conjunction with good and reasonable business judgment by competent personnel. Client is solely responsible for the accuracy and adequacy of the information and data furnished for processing with the Software. The successful operation of the Software is dependent on Client’s use of proper procedures and systems and input of correct data.

9.5. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FM:SYSTEMS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF CUSTOMARY USAGE IN THE TRADE OR BY COURSE OF DEALING.**

10. **Liability.**

10.1. The limit of FM:Systems’ liability (whether in contract, tort, negligence, strict liability in tort, or by statute or otherwise) to Client or to any third party concerning performance or non-performance by FM:Systems, or in any manner related to this Agreement, for any and all claims shall not exceed in the aggregate the Fees paid by Client to FM:Systems hereunder with respect to the Software at issue during the twelve (12) month period immediately preceding the event which gave rise to the claims.

10.2. In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damage or expenses whether arising in contract or tort (including but not limited to lost profits,
savings, data, the cost of recreating lost data, interruption of business, or costs of procurement of
substitute goods or services), even if it has been advised of their possible existence.

11. **Indemnification.**

11.1. If a claim of copyright, trade secret, or other intellectual property rights violation is made against
Client relating to the Software, Client agrees to immediately notify FM:Systems, allow FM:Systems to
participate in the litigation or settlement of such claim, and cooperate with FM:Systems in the
investigation, defense, and/or settlement thereof. FM:Systems agrees to participate in the litigation and
indemnify Client by paying any settlement approved by FM:Systems, or any judgment, costs, or
attorneys’ fees finally awarded against the client for such claim. Each Party shall be responsible for its
own expenses. This indemnification obligation does not apply to the extent the claim is based on a
combination of FM:Systems Software with other software or a modification to the Software made or
suggested by Client if such claim would not have been made but for the combination or modification.

11.2. If such a claim is made or, in FM:Systems’ opinion, is likely to be made, FM:Systems, at its option,
may modify the Software, obtain rights for the Client to continue using the Software, or terminate the
agreement for the Software product at issue.

11.3. Client shall own or otherwise obtain all required permissions from third parties for Client’s use of,
and FM:Systems’ access to or for integration and support purposes, all materials, information, content, or
software that are integrated with or used in connection with the Software and that are supplied by Client
or at Client’s request (collectively, “Materials”).

12. **Data Protection.** In performing the services, FM:Systems will comply with the Customer Data
Protection Plan, attached hereto as Exhibit C. FM:Systems will act as a data processor, and will act on
Client instructions concerning the treatment of the Client data residing in the services environment, as
specified in this Agreement and the applicable Order Form. Client agrees to provide any notices and
obtain any consents related to its use of the services and FM:Systems’ provision of the same, including
those related to the collection, use, processing, transfer and disclosure of any such data.

After the thirtieth (30th) day following any termination or expiration of this Agreement, Client agrees
FM:Systems has no obligation to retain the data and may delete and destroy such data without
providing any with notice of such deletion.

13. **Force Majeure.** Reserved.
14. **Insurance.**

Prior to performing hereunder, FM:Systems shall provide a certificate(s) of insurance in limits no less than the following: (a) Workers' Compensation in the statutory limits required in the states where work will be performed; (b) Employers Liability - $1,000,000; (c) Comprehensive General Liability $1,000,000 (including products and completed operations, broad form contractual liability and primary and non-contributory insurance coverage) (d) Professional Liability $5,000,000 (e) Hired and Non-Owned Automobile Liability - $1,000,000. (f) Umbrella limits of $5,000,000; (f) Errors & Omissions (including Cyber Liability & Privacy) limits of $5,000,000. The umbrella provides excess coverage over General Liability, Auto, and Workers Compensation Limits. Client shall be named as an additional insured on all policies except for the Worker's Compensation and Professional Liability policies. The certificate(s) of insurance shall certify that the insurance carrier(s) will endeavor to give Client thirty days prior written notice of any material change in, or cancellation of such insurance coverage, except for non-payment which provides a 10- day notice.

15. **Miscellaneous.**

15.1 Client acknowledges that FM:Systems and its licensors may from time to time analyze data from Client’s database maintained in the Software solely for purposes of statistical analysis, with the express understanding that FM:Systems will not use such data for any purpose other than the maintenance, support and product development.

15.2 **Reserved.**

This Agreement and Exhibits A, B, and C constitute the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral agreements with respect to its subject matter. Except as provided expressly herein, this Agreement shall not be modified, amended, or in any way altered except by a written document executed by both of the parties. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance.

15.4 Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

15.5 **Reserved.**

15.6 This Agreement shall be governed by Federal law.

15.7 All notices required or permitted hereunder shall be in writing, delivered personally or by telephonic facsimile, certified or registered mail, or overnight delivery by an established national delivery service at the respective addresses first set forth above, or as otherwise identified by each party. All notices shall be deemed effective upon personal delivery; or on the day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight delivery.
EXHIBIT A
SOFTWARE SUPPORT AND MAINTENANCE SERVICES

1. FM:Systems will provide support for the Software (e.g., features of the Software not working, general questions on use) via telephone, e-mail, fax, and web Monday through Friday (excluding FM:Systems business holidays) during 9:00 a.m. – 8:00 p.m. Eastern Time ("Normal Business Hours"). FM:Systems will use commercially reasonable efforts to communicate a qualified response or status within two business days for any unresolved problems. FM:Systems’ assistance will consist only of providing general advice on the installation, operation and use of the Software and assistance with suspected problems with the Software.

A separate Infrastructure Support telephone number for reporting of IT infrastructure problems (e.g., system-wide failure) will also be available twenty-four (24) hours per day (1-800-648-8030). Calls to the Infrastructure Support telephone number made outside of Normal Business Hours will be forwarded to FM:Systems’ answering service and an on-call engineer will be paged. Use of Infrastructure Support is limited to Severity One and Severity Two problems only, as defined in Exhibit B.

For all reported problems, FM:Systems will work to determine the source of the problem. FM:Systems will attempt to correct all documented problems reported to FM:Systems by Client that FM:Systems is able to recreate at FM:Systems’ facility and will deliver any corrections to Client ("Error Corrections"). FM:Systems may identify errors as arising from non-FM:Systems hardware or software, or from unauthorized modifications to the Licensed Product. In such a case, FM:Systems reserves the right to charge Client for correcting such errors at its then-current rates for such services.

From time to time, FM:Systems will provide Client with all updates including minor functional enhancements and error corrections ("Updates") and upgrades to Software including major functional enhancements ("Upgrades") that FM:Systems generally makes available for no additional charge to Clients paying for subscription use. FM:Systems will deploy the Update or Upgrade at a mutually agreed upon time within six (6) months from the release date. During the deployment of the Update or Upgrade FM:Systems will upgrade the test environment with the new version and Client will have two (2) weeks to review, at the end of which FM:Systems will upgrade Client’s production system to that new version of the Software. Upgrades and Updates do not include new modules or products, which port existing Software to new hardware or software platforms, which provide significant new functionality on new hardware or software platforms, or which apply to third-party products.

Client will be entitled to access the FM:Systems User Forum, an online community of users and peers.

2. Notwithstanding anything to the contrary in these Maintenance terms, FM:Systems shall have no responsibility to provide any technical support or assistance, nor any Updates or Upgrades, to any third-party software not supplied by FM:Systems. It shall be Client’s obligation to obtain maintenance and support directly from the manufacturer of such software.

3. FM:Systems will not be obligated to provide any services in addition to those set forth in these Maintenance Services terms ("Additional Services"). Unless otherwise agreed, Client shall pay FM:Systems at FM:Systems’ then-current hourly rates for Additional Services provided. Additional Services include, but are not limited to, the following: (i) detailed advice or support regarding the use and operation of the Software; (ii) on-site service of any kind; (iii) installation, data conversion, system integration or consulting services; (iv) service or maintenance of third-party software, operating software, hardware, or other equipment; (v) services caused by Client’s fault, misuse, negligence or failure to perform Client’s responsibilities; (vi) services caused by a malfunction of or problem with any product or goods other than those licensed by FM:Systems; and (vii) services caused by the use by Client of any version of the Software other than the current or immediately prior version.
EXHIBIT B
HOSTED SERVICES SUPPORT LEVEL AGREEMENT

1. License and Hosting.
   a. Subject to the terms and conditions of this Agreement and the applicable Order Form, FM:Systems grants Client, and Client accepts, a nontransferable and nonexclusive license to use in object code form only, and on an application services provider (ASP) basis the Software (including all associated documentation ("Documentation")) for the sole purpose of processing information for its own internal business purposes and only in connection with the licensed facilities set forth in the applicable Order Form, and subject to any limitations set forth in the applicable Order Form (but not for any other purposes or in connection with any other facilities).
   b. The Software may be used and accessed only by Client’s employees or contractors ("Contractors") using the Software for its intended purpose while doing work for the Client. Contractors may not use the Software for their own business operations or administrative processes.
   c. Client acknowledges that FM:Systems and its licensors are the sole owner of all intellectual property rights in and to the Software and the Site, including but not limited to the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated therewith. Except as expressly authorized in this Agreement, Client will not copy, modify, distribute, sublicense, transfer, display, rent or unbundle the Software. In addition, Client will not reverse engineer, decompile or disassemble the Software, and will not otherwise attempt to reconstruct or discover the source code for the Software. Except as stated above, this Agreement does not grant Client any right, title or interest (whether by license, ownership or otherwise) in or to any intellectual property or proprietary rights with respect to the Software or Documentation. Client agrees that any copies of the Software shall contain the same proprietary notices that appear on and in the Software.
   d. Client shall retain sole ownership of all CAD drawings and other data supplied by Client for use with the Software.
   e. FM:Systems and its licensors reserve all rights in the Software and Documentation not expressly granted to Client and hereunder.

2. Support Level Agreement.
The hosting services will generally be available twenty-four hours per day, seven days per week except for periodic system maintenance. However, the Service Levels for Software Availability shall be measured only during the following hours:

   Monday – Friday: 6:00 am - 12:00 midnight Eastern Time
   Saturday – Sunday: 9:00 am - 10:00 pm Eastern Time

From time to time FM:Systems will be required to do scheduled maintenance. An example of scheduled maintenance would be to perform database maintenance or implement a Software upgrade. When possible, FM:Systems will: (a) schedule maintenance to be performed outside of regular business hours, and (b) give Client prior notice of any scheduled maintenance as specified in the FM:Systems Change Management Service Levels and Procedures Document.

   a. Severity Levels

      Operational problems will be identified with a Severity Level, using FM:Systems’ best judgment and input from the customer.

      • “Severity One” means a system-wide failure. The service or software, in a supported configuration, has complete loss of service or resources for which no workaround exists, and the Client’s work cannot
reasonably continue. Service cannot reasonably continue until the system is restored and delivery is totally stopped.

- “Severity Two” means a semi system-wide failure. The Service or Software, in a supported configuration, is causing significant or degraded loss of Client’s service or resources. The customer’s service is seriously impacted but delivery has not totally stopped.

- “Severity Three” means the Service or Software, in a supported configuration, has minor loss of Client’s service or resources. This can be defined as a product flaw with a workaround or a problem with a portion of the software’s function that does not impact delivery.

- “Severity Four” means the Service or Software is in full working mode. Client’s work is not being impeded at this time. Information is requested or reported.

b. Levels

FM:Systems will strive to operate at the service levels described as “Goal”, and credits will apply as described below if FM:Systems does not perform at or above the “Minimum Service Level”. If any service element deteriorates so much as to be measured at the Crisis Trigger level, the situation will be immediately escalated to the Chief Technology Officer of FM:Systems, and payment of software usage fees will be suspended until the situation is resolved.

<table>
<thead>
<tr>
<th>Performance Category</th>
<th>Service Level Description</th>
<th>Goal</th>
<th>Minimum Service Level</th>
<th>Crisis Trigger</th>
</tr>
</thead>
<tbody>
<tr>
<td>Software Availability</td>
<td>Availability of hosted Software</td>
<td>99,9%</td>
<td>99,5%</td>
<td>98,0%</td>
</tr>
<tr>
<td>Response Time for Severity One Problems</td>
<td>Time by which FM:Systems will respond to Severity One. Client’s notification must be by phone per the procedures set forth above. FM:Systems’ response may be by phone or e-mail.</td>
<td>30 Minutes</td>
<td>1 Hour</td>
<td>2 Hours</td>
</tr>
<tr>
<td>Response Time for Severity Two, Three, and Four Problems</td>
<td>Time by which FM:Systems will respond to Severity Two, Severity Three, and Severity Four Problems. FM:Systems’ response may be by phone or e-mail.</td>
<td>2 Business Hours</td>
<td>4 Business Hours</td>
<td>24 Business Hours</td>
</tr>
</tbody>
</table>

“Availability” or “Available” refers to the ability of an Internet user being able to establish a TCP connection to the appropriate FM:Systems-hosted server.

“Availability Percentage” shall be calculated as follows: \[ x = \left[100(n - y)/n\right] \text{percent}, \] where “x” is the Availability Percentage, “n” is the total number of hours in a given calendar month, and “y” is the total number of hours service is not Available (as defined above) in a given calendar month. The calculation of “x” shall be prorated in any month in which services commence on any day other than the first day of the month.

Specifically excluded from “n” and “y” in this calculation and defined as exceptions to the levels of Availability provided herein are (a) scheduled maintenance windows and (b) reasons of Force Majeure.

Specifically excluded from “y” are failures of Availability to the extent caused by or related to downtime (a) due to failures of access circuits to the Software; (b) scheduled maintenance; (c) emergency maintenance; (d) emergency upgrades; (e) “false-positive” service breaches reported as a result of outages or errors of any FM:Systems measurement system; (f) any negligence, willful misconduct, or use of the Software or FM:Systems services in breach of this Agreement or FM:Systems’ Acceptable Use Policy by Client or by others engaged or
authorized by the customer; or (f) issues associated with Client’s LANs, Client’s ISPs or other Client Internet connections.

Also specifically excluded from “y” are outages resulting from network service provider outages or Internet outages resulting from failures outside the control of FM:Systems or its hosting provider. Examples of these types of outages include:

- Corruption in Internet route information within a Tier 1 Internet route server environment;
- Major connectivity failures within or between Tier 1 Internet service providers;
- Corruption in Internet route information at any public or private exchange point;
- Corruption of root level DNS services.

No credits will apply unless Client specifically requests a credit in writing within fifteen (15) days of the failure to meet a Minimum Service Level, subject to confirmation of such service failure by FM:Systems. For each Minimum Service Level that FM:Systems fails to meet during a calendar month within a specified threshold, FM:Systems will grant a performance credit to the Client for that Service Level failure at the rate of one (1) days’ worth of the base fee times the number of hours (or business hours, as applicable) the Minimum Service Level is not met (rounded up to the next whole hour). The performance credit will be applied to the Client’s invoice within two (2) billing cycles after receipt of the Client’s written request for credit, reducing the amount to be paid by the Client. The maximum credit for any given month will be 50% of the Base Fee paid for such month that the service failure occurred.
EXHIBIT C
CUSTOMER DATA PROTECTION PLAN

1. Introduction
   - This Customer Data Protection Policy is a part of the Master Services Agreement. It sets out additional security and privacy commitments of FM:Systems. Capitalized terms not otherwise defined here retain the same meaning set forth in the Subscription Agreement.

2. Data Confidentiality
   - FM:Systems shall maintain administrative, physical and technical controls designed to protect the security, confidentiality and integrity of Customer’s Customer Data.

3. Access
   - FM:Systems will not knowingly authorize its personnel to have access to any records or data of Customer if the person has been convicted of a crime involving fraud or dishonesty. FM:Systems shall, to the extent permitted by law, conduct a check of public records in the employee’s states/country of residence and employment to verify the above.

4. Compliance
   - FM:Systems agrees to provide evidence upon reasonable request of compliance of any system or component used to process, store, or transmit Customer Data that is operated by FM:Systems as part of its service. Similarly, FM:Systems will be prepared to provide available evidence of compliance of any third party it has sub-contracted as part of the service offering. FM:Systems shall take reasonable steps to periodically review and maintain its policies, standards, and procedures. An internal committee with representation from various parts of the organization will oversee our information technology security policies, standards, and procedures.

5. Network Security
   - FM:Systems agrees to maintain commercially reasonable network security that, at a minimum, includes:
     - Appropriate measures implemented to protect the perimeter network
     - Intrusion detection/prevention tools;
     - Periodic third-party penetration testing;
     - Periodic external and internal vulnerability scanning
     - Network security that at minimum conforms to an industry recognized standard Anti-spoofing filters enabled on routers;
     - Network, application and server authentication passwords meet minimum complexity guidelines and regularly changed, adhering to acceptable industry standards.
     - Initial user passwords changed during first logon, and policy prohibiting the sharing of user IDs and passwords
• **Remote Network Connectivity.** When remote connectivity to the data exporter network is required for processing of Customer Data, FM:Systems uses secure remote network connectivity solutions e.g., VPM, SDN, or equivalent means to connect to servers for remote access.

6. **Data Security**

• FM:Systems agrees to conform to the following measures:
  
  a. **Data Transmission.** FM:Systems agrees that any transmission or exchange of system application data with Customer will occur through secure protocols, e.g. HTTPS, FTPS, SFTP, or equivalent means.
  
  b. **Data Storage and Backup.** Customer Data in production is not encrypted at rest. With respect to back up, FM:Systems agrees to maintain (for the applicable contractual period) Customer’s Customer Data for backup and recovery processes in encrypted form, using no less than 128-bit key.
  
  c. **Testing Data.** FM:Systems shall implement data protection and obfuscation during application testing or other processes outside of the production environment to sufficiently prevent identification of the actual individual or corporate customer to whom the original data refers, or preparing and executing a data protection plan.

7. **System Acquisition, Development and Maintenance**

• **Security Requirements.** FM:Systems has adopted security requirements for the purchase or development of information systems, including for application services delivered through public networks.
  
  b. **Development Requirements.** FM:Systems has policies for secure development, system engineering and support. FM:Systems conducts appropriate tests for system security as part of Quality Assurance (QA) testing processes.

8. **Supplier Relationships**

• **Policies.** FM:Systems has information security policies or procedures for its use of suppliers.
  
  b. **Management.** FM:Systems performs periodic reviews of key suppliers and manages service delivery commitments through contracts with its suppliers.

9. **Data Breach**

• FM:Systems agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification.

10. **Safekeeping and Security**

• FM:Systems will be responsible for safekeeping all keys, access codes and similar security codes and identifiers issued to FM:Systems’ employees, agents, contractors, or subcontractors. FM:Systems shall ensure that access codes and passwords conforms to an industry recognized standard.
  
  a. **Access Policy.** An access control policy is established, documented, and reviewed
Based on business and information security requirements.

b. **Access Authorization.**
   
i. FM:Systems has user account creation and deletion procedures, with appropriate approvals, for granting and revoking access to FM:Systems’ and/or its Customers’ systems and networks at regular intervals based on the principle of “least privilege” and need-to-know criteria based on job role.
   
ii. FM:Systems maintains and updates a record of personnel authorized to access systems that contain personal data.
   
iii. FM:Systems maintains strict policies against any shared “generic” user identification access.
   
iv. FM:Systems maintains a password policy requiring accounts to be locked out after a defined maximum number of login attempts in accordance with FM:Systems’ current password policy.

c. **Integrity and Confidentiality.**
   
i. FM:Systems instructs its personnel to automatically lock screens and/or disable administrative sessions when leaving premises that are controlled by FM:Systems or when computers are otherwise left unattended.
   
ii. FM:Systems computers and trusted devices automatically lock after a defined period of inactivity.
   
iii. FM:Systems stores passwords in a secured and restricted way that makes them unintelligible while they are in force.

d. **Authentication.**
   
i. FM:Systems uses industry standard practices to identify and authenticate users who attempt to access information systems. Where authentication mechanisms are based on passwords, FM:Systems requires that the passwords be renewed regularly, based on acceptable industry standards.
   
ii. Where authentication mechanisms are based on passwords, FM:Systems requires the password to conform to very strong password control parameters including length, character complexity, and non-repeatability.
   
iii. FM:Systems monitors repeated attempts to gain access to the information system using an invalid password.
   
iv. FM:Systems maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.
11. **Operations Security**
   - FM:Systems will maintain policies describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data.

12. **Physical Access to Facilities**
   a. FM:Systems limits access to facilities where systems that process personal data are located to authorized individuals.
   b. Access is controlled through key card and/or appropriate sign-in procedures for facilities with systems processing personal data. Personnel must be registered and are required to carry appropriate identification badges.
   c. A security alarm system or other appropriate security measures shall be in place to provide alerts of security intrusions after normal working hours.

13. **Monitoring and Auditing**
   - FM:Systems will regularly monitor and audit the effectiveness of its information security practices. Servers shall be scanned regularly to ensure they meet the current security standards.

14. **Disaster Recovery**
   - To minimize potential losses and to permit resumption of processing, FM:Systems shall maintain contingency plans consistent with the impact of any system failures on the business. These plans include a suitable backup and disaster recovery plan that is maintained, properly documented, periodically tested and appropriate for the system covered.
ORACLE CLOUD SERVICES GSA SUPPLEMENTAL TERMS AND CONDITIONS v103119

THESE ORACLE CLOUD SERVICES GSA SUPPLEMENTAL TERMS AND CONDITIONS v103119 ("GSA STCS") SHALL APPLY TO THE ORACLE CLOUD SERVICES THAT YOU ORDER FROM THE CONTRACTOR (THE "CONTRACTOR") UNDER THE CONTRACTOR'S GSA SCHEDULE CONTRACT ("THE CONTRACT"). THESE CLOUD STCS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN ANY NON-ORACLE ORDER OR ORDERING DOCUMENTATION. THESE CLOUD STCS ARE CONSIDERED PART OF THE SCHEDULE OF SUPPLIES/SERVICES IN YOUR ORDER TO THE CONTRACT.

A. Definitions
"You" and "Your" refers to the ordering activity that has ordered Oracle Services from an authorized distributor ("Contractor") under the Contract.

The term "Contract" refers to the Contractor's GSA Schedule contract.

The term "Oracle Software" means any software agent, application or tool that Oracle makes available to You for download specifically for the purpose of facilitating Your access to, operation of, and/or use with, the Services.

The term "Program Documentation" refers to the user manuals, help windows, readme files for the Services and any Oracle Software. You may access the documentation online at http://oracle.com/contracts or such other address specified by Oracle.

The term "Service Specifications" means the following documents, as applicable to the Services under Your order: (a) the Cloud Hosting and Delivery Policies, the Program Documentation, the Oracle service descriptions, and the Data Processing Agreement described in these Cloud STCs; (b) Oracle's privacy policies; and (c) any other Oracle documents that are referenced in or incorporated into Your order as required by the Contractor. The following do not apply to any non-Cloud Oracle service offerings acquired in Your order, such as professional services: the Cloud Hosting and Delivery Policies, Program Documentation, and the Data Processing Agreement. The following do not apply to any Oracle Software: the Cloud Hosting and Delivery Policies, Oracle service descriptions, and the Data Processing Agreement.

The term "Third Party Content" means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Oracle that You may access through, within, or in conjunction with Your use of, the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, Oracle data marketplaces and libraries, dictionaries, and marketing data. Third party content includes third-party sourced materials accessed or obtained by Your use of the Services or any Oracle-provided tools.

The term "Users" means for Services, those employees, contractors, and end users, as applicable, authorized by You or Your behalf to use the Services in accordance with these Cloud STCs and Your order. For Services that are specifically designed to allow Your clients, agents, customers, suppliers, or other third parties to access the Services to interact with You, such third parties will be considered "Users" subject to the terms of these Cloud STCs and Your order.

The term "Your Content" means all software, data (including Personal Data as that term is defined in the Data Processing Agreement), text, images, audio, video, photographs, non-Oracle or third party applications, and other content and material, in any format, provided by You or any of Your Users that is stored in, or run on or through, the Services. Services under these Cloud STCs, Oracle Software, other Oracle products and services, and Oracle intellectual property, and all derivative works thereof, do
not fall within the meaning of the term “Your Content”. Your content includes any Third Party Content that is brought by You into the Services, by Your use of the Services or any Oracle provided tools.

B. Use of Services

Upon Contractor’s acceptance of Your order, Oracle will make the Oracle services listed in Your order (the “Services”) available to You pursuant to these Cloud STCs and Your order. Except as otherwise stated in these Cloud STCs or Your order, You have the non-exclusive, worldwide, limited right to use the Services during the period defined in Your order (the “Service Period”), solely for Your internal business operations. You may allow Your Users to use the Services for this purpose and You are responsible for Your Users’ compliance with these Cloud STCs and the order.

The Service Specifications describe and govern the Services. During the Services Period, Oracle may update the Services and Service Specifications (with the exception of the Data Processing Agreement as described below) to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Content. Oracle updates to the Services or Service Specifications will not materially reduce the level of performance, functionality, security or availability of the Services during the Services Period of Your order.

You may not, and may not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking or availability testing of the Services; (c) perform or disclose any performance or vulnerability testing of the Services without Oracle’s prior written approval, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Services; or (d) use the Services to perform cyber currency or crypto currency mining; ((a) through (d) collectively, the “Acceptable Use Policy”). In addition to other rights that Oracle has in these Cloud STCs and Your order, Oracle has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

C. Ownership Rights and Restrictions

You and Your licensors retain all ownership and intellectual property rights in and to Your Content. Oracle or its licensors retain all ownership and intellectual property rights to the Services, derivative works thereof, and to anything developed or delivered by or on behalf of Oracle under Your order.

You may have access to Third Party Content through use of the Services. Unless otherwise stated in Your order, all ownership and intellectual property rights in and to Third Party Content and the use of such content is governed by separate third party terms between You and the third party.

You grant Oracle the right to host, use, process, display and transmit Your Content to provide the Services pursuant to and in accordance with these Cloud STCs and Your order. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Your Content, and for obtaining all rights related to Your Content required by Oracle to perform the Services.

You may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Oracle; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by these Cloud STCs or Your order.
D. Term and Termination

Services shall be provided for the Services Period defined in Your order, unless earlier suspended or terminated in accordance with these Cloud STCs. These Cloud STCs will continue to govern any order for the duration of the Services Period of such order.

If You order Services that are designated in the Service Specifications or Your order as Services that will be automatically extended, such Services will NOT automatically be extended for an additional Services Period of the same duration unless You provide Oracle or an authorized reseller (e.g., Contractor) with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Your intention to renew such Services and You execute an order modification or enter into a new order to renew such Services. The preceding sentence shall not apply if Oracle provides You with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew such Services.

Oracle may temporarily suspend Your or Your Users’ access to, or use of, the Services if Oracle believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; or (b) You or Your Users are accessing or using the Services to commit an illegal act; or (c) there is a violation of the Acceptable Use Policy contained in Section B of these STCs. When reasonably practicable and lawfully permitted, Oracle will provide You with advance notice of any such suspension. Oracle will use reasonable efforts to re-establish the Services promptly after Oracle determines that the issue causing the suspension has been resolved. During any suspension period, Oracle will make Your Content (as it existed on the suspension date) available to You. Any suspension under this paragraph shall not excuse You from Your obligation to make payments under these Cloud STCs or Your order.

If Contractor breaches a material term of the Contract or any order and fails to correct the breach within 30 days of written specification of the breach, then You may terminate the order under which the breach occurred. You may agree in Your sole discretion to extend the 30 day period for so long as Contractor continues reasonable efforts to cure the breach. Any disputes relating to alleged breaches of the Contract or any order shall be handled in accordance with the Contract Disputes Act, 41 U.S.C. §§ 7101-7109.

You may terminate the Contract or Your order at any time without cause by giving Contractor 30 days prior written notice of such termination. Termination of the Contract will not affect orders that are outstanding at the time of termination. Those orders will be performed according to their terms as if the Contract and these Cloud STCs were still in full force and effect. However, those orders may not be renewed or extended subsequent to termination of the Contract.

At the end of the Services Period, Oracle will make Your Content (as it existed at the end of the Services Period) available for retrieval by You during a retrieval period set out in the Service Specifications. At the end of such retrieval period, and except as may be required by law, Oracle will delete or otherwise render unrecoverable any of Your Content that remains in the Services. Oracle’s data deletion practices are described in more detail in the Service Specifications.

Provisions in these Cloud STCs that survive termination or expiration of the Contract are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

E. Fees and Taxes

Fees paid for Services performed are non-refundable, except as provided in these Cloud STCs or Your order. Fees for Services offerings are invoiced in arrears of the service performance. Contractor shall state separately on invoices taxes excluded from the fees, and You agree either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

You agree and acknowledge that You have not relied on the future availability of any services, programs or updates in executing Your order; however, the preceding does not relieve Oracle of its obligation during the Services Period to deliver services that You have ordered per the terms of these Cloud STCs.
F. Nondisclosure
By virtue of Your order and these Cloud STCs, Oracle, the Contractor and You may disclose to each other information that is confidential ("Confidential Information"). Confidential information shall be limited to the terms and pricing under these Cloud STCs and Your order, to the extent not otherwise publically available, Your Content residing in the Services, and all information clearly identified as confidential at the time of disclosure.

A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

Subject to the Freedom of Information Act ("FOIA") (5 U.S.C. §552), Oracle, the Contractor and You each agree not to disclose each other’s Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party’s disclosure of the Confidential Information to the receiving party; however, Oracle will protect the confidentiality of Your Content residing in the Services for as long as such information resides in the Services. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under these Cloud STCs, and each party may disclose the other party’s Confidential Information in any legal proceeding or to a governmental entity as required by law. Oracle will protect the confidentiality of Your Content resident in the Services in accordance with the Oracle security practices defined as part of the Service Specifications applicable to Your order.

The parties acknowledge and agree that You and these Cloud STCs are subject to FOIA. Should You receive a request under such law for Oracle’s Confidential Information, You agree to give Oracle adequate prior notice of the request and before releasing Oracle’s Confidential Information to a third party, in order to allow Oracle sufficient time to seek injunctive relief or other relief against such disclosure.

G. Protection of Your Content
In order to protect Your Content provided to Oracle as part of the provision of the Services, Oracle will comply with the following:

a. the relevant Oracle privacy policies applicable to the Services ordered, available at http://www.oracle.com/us/legal/privacy/overview/index.html; and


To the extent Your Content includes Personal Data (as that term is defined in the Data Processing Agreement), Oracle will furthermore comply with the applicable version of the Oracle Data Processing Agreement for Oracle Cloud Services (the "Data Processing Agreement"), unless stated otherwise in Your order. The version of the Data Processing Agreement applicable to Your order (a) is available at http://www.oracle.com/dataprocessingagreement and is incorporated herein by reference, and (b) will remain in force during the Services Period of Your order. In the event of any conflict between the terms of the Data Processing Agreement and the terms of the Service Specifications (including any applicable Oracle privacy policies), the terms of the Data Processing Agreement shall take precedence.

Without prejudice to the preceding paragraphs of this Section G, You are responsible for (a) any required notices, consents and/or authorizations related to Your provision of, and our processing of, Your Content (including any Personal Data) as part of the Services, (b) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content, including any viruses, Trojan horses, worms or other harmful programming routines contained in Your Content, and (c) any use by You or Your Users of the Services in a manner that is inconsistent with the terms of these Cloud STCs. To the extent You disclose...
or transmit Your Content to a third party, we are no longer responsible for the security, integrity or confidentiality of such content outside of Oracle’s control.

Unless otherwise specified in Your order (including in the Service Specifications), Your Content may not include any sensitive or special data that imposes specific data security or data protection obligations on Oracle in addition to or different from those specified in the Service Specifications. If available for the Services, You may purchase additional services from us (e.g., Oracle Payment Card Industry Compliance Services) designed to address specific data security or data protection requirements applicable to such sensitive or special data You seek to include in Your Content.

H. Warranties, Disclaimers and Exclusive Remedies
For the sake of clarity, this is Oracle’s warranty; nevertheless, it shall be accessed by You through the Contractor.

Oracle warrants that during the Services Period, Oracle will perform Services using commercially reasonable care and skill in all material respects as described in the Service Specifications. If the Services provided to You were not performed as warranted, You must promptly provide written notice to Oracle that describes the deficiency in the Services (including, as applicable, the service request number notifying Oracle of the deficiency in the Services).

ORACLE DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ORACLE WILL CORRECT ALL SERVICE ERRORS, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCETE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT OR THIRD PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.

FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE’S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF THE WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALMELY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO CONTRACTOR THE FEES FOR THE DEFICIENT SERVICES THAT CONTRACTOR PAID TO ORACLE FOR THE PERIOD OF TIME DURING WHICH THE SERVICES WERE DEFICIENT, AND CONTRACTOR WILL IN TURN REFUND TO YOU THE FEES FOR THE DEFICIENT SERVICES THAT YOU PAID TO CONTRACTOR FOR THE PERIOD OF TIME DURING WHICH THE SERVICES WERE DEFICIENT.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

I. Limitation of Liability
IN NO EVENT SHALL YOU, THE CONTRACTOR, ORACLE OR ANY PARTY’S AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER YOUR ORDER), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION, CONTRACTOR’S MAXIMUM LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO YOUR ORDER, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO CONTRACTOR FOR THE SERVICES UNDER YOUR ORDER LESS ANY REFUNDS OR CREDITS RECEIVED BY YOU FROM CONTRACTOR UNDER SUCH ORDER.
IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND ORACLE’S AFFILIATES ARISING OUT OF OR RELATED TO THESE CLOUD STCS OR YOUR ORDER, WHETHER IN CONTRACT, TORT OR OTHERWISE EXCEED THE TOTAL AMOUNTS ACTUALLY PAID TO ORACLE FOR THE SERVICES UNDER YOUR ORDER LESS ANY REFUNDS OR CREDITS RECEIVED BY CONTRACTOR FROM ORACLE UNDER SUCH ORDER. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) FRAUD; OR (2) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

J. Intellectual Property Indemnification

If a third party makes a claim against You or Oracle ("Recipient" which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively “Material”) furnished by either You or Oracle ("Provider" which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party’s intellectual property rights, the Provider, at the Provider’s sole cost and expense will, to the extent not prohibited by law, defend the Recipient against the claim and indemnify Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider if Recipient does the following:

a. notifies the Provider promptly in writing, not later than 30 days after Recipient receives notice of the claim (or sooner if required by applicable law);

b. gives the Provider sole control of the defense and any settlement negotiations, provided that for the U.S. Government the control of the defense and settlement is subject to 28 U.S.C. 516; and

c. gives the Provider the information, authority, and assistance Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund the fees the Recipient may have paid for such Material. If such return materially affects Oracle’s ability to meet its obligations under the relevant order, then Oracle may upon 30 days prior written notice, terminate the order. Oracle’s right to end the order in accordance with this paragraph shall not apply if You authorize or consent to use of the Material, and in such cases, Oracle shall have no obligation to indemnify or other liability whatsoever, to You or to third parties for infringement, and the exclusive cause of action and remedy for infringement shall be in accordance with 28 U.S.C. §1498, as set forth in 48 C.F.R. §27.201-1(a). If such Material is third party technology and the terms of the third party license do not allow Oracle to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

The Provider will not indemnify the Recipient if the Recipient (a) alter the Material or use it outside the scope of use identified in the Provider’s user documentation or Service Specifications, or (b) uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon Material not furnished by the Provider. Oracle will not indemnify You to the extent that an infringement claim is based on third party Content or any Material from a third party portal or other source that is accessible or make available to Your within or by the Services (e.g. a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from a third party data providers, etc.

With respect to the U.S. Government, the foregoing indemnification shall not apply as to the United States indemnifying Oracle or any other party, however, Oracle reserves the right to seek indemnification from the U.S. Government in accordance with the preceding paragraphs should Federal statute permit such indemnification.
This Section J provides the parties’ exclusive remedy for any infringement claims or damages.

K. Third Party Content, Services and Websites
The Services may enable You to link to, transmit Your Content or Third Party Content to, or otherwise access, third parties’ websites, platforms, content, products, services, and information (“Third Parties Services”). Oracle does not control and is not responsible for Third Party Services. You are solely responsible for complying with the terms of access and use of Third Party Services, and if Oracle accesses or uses any Third Party Services on Your behalf to facilitate performance of the Services, You are solely responsible for ensuring that such access and use, including through passwords, credentials or tokens issued or otherwise made available to You, is authorized by the terms of access and use for such services. If You transfer or cause the transfer of Your Content or Third Party Content from the Services to a Third Party Service or other location, that transfer constitutes a distribution by You and not by Oracle.

Any Third Party Content Oracle makes accessible is provided on an “as-is” and “as available” basis without any warranty of any kind. You acknowledge and agree that Oracle is not responsible for, and has no obligation to control, monitor, or correct, Third Party Content. Oracle disclaims all liabilities arising from or related to Third Party Content.

You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™, and Twitter™, etc., depend on the continuing availability of such third parties’ respective application programming interfaces (APIs). Oracle may update, change or modify the Services under the Contract, as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Oracle in its sole discretion, Oracle may cease providing access to the affected Third Party Content or third party services without any liability to You or the Contractor. Any changes to Third Party Content, Third Party Services or APIs, including their unavailability, during the Services Period does not affect Your obligations under the Contract, these Cloud STCs or the applicable order, and You will not be entitled to any refund, credit or other compensation due to any such changes.

L. Service Monitoring, Analyses and Oracle Software
Oracle continuously monitors the Services to facilitate Oracle’s operation of the Services; to help resolve Your service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. Oracle monitoring tools do not collect or store any of Your Content residing in the Services, except as needed for such purposes. Oracle does not monitor, and does not address issues with, non-Oracle software provided by You or any of Your Users that is stored in, or run on or through, the Services. Information collected by Oracle monitoring tools (excluding Your Content) may also be used to assist in managing Oracle’s product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license management purposes.

Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses (i) and (ii) are collectively referred to as “Service Analyses”). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content, Personal Data or Confidential Information in a form that could serve to identify You or any individual. Oracle retains all intellectual property rights in Service Analyses.

Oracle may provide You with the ability to obtain certain Oracle Software for use with the Services. If Oracle provides Oracle Software to You and does not specify separate terms for such software, then such Oracle Software is provided as part of the Services and You have the non-exclusive, worldwide, limited right to use such Oracle Software, subject to the terms of these Cloud STCs and Your order (except for separately licensed elements of the Oracle Software, which separately licensed elements are governed by the
applicable separate terms), solely to facilitate Your use of the Services. You may allow Your Users to use
the Oracle Software for this purpose, and You are responsible for their compliance with the license terms.
Your right to use Oracle Software will terminate upon the end of these Services associated with the Oracle
Software or earlier if terminated in accordance with the Contract Disputes Act or terminated for
convenience. Notwithstanding the foregoing, if Oracle Software is licensed to You under separate terms,
then Your use of such software is governed by the separate terms. Your right to use any part of the Oracle
Software that is licensed under the separate terms is not restricted in any way by these Cloud STCs.

M. Export
Export laws and regulations of the United States and any other relevant local export laws and regulations
apply to the Services. Such export laws govern Your use of the Services (including technical data) and any
services deliverables provided under Your order, and You and Oracle each agree to comply with all such
export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree
that no data, information, software programs and/or materials resulting from Services (or direct product
thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose
prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation,
or development of missile technology.

You acknowledge that the Services are designed with capabilities for You and Your Users to access the
Services without regard to geographic location and to transfer or otherwise move Your Content between
the Services and other locations such as User workstations. You are solely responsible for the authorization
and management of User accounts across geographic locations, as well as export control and geographic
transfer of Your Content.

N. Force Majeure
Excusable delays shall be governed by FAR 52.212-4(f) to the extent not inconsistent with these STCs. All
parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues
for more than 30 days, the affected order(s) will be terminated for convenience unless the parties otherwise
agree in writing. This Section does not excuse any party’s obligation to take reasonable steps to follow its
normal disaster recovery procedures or Your obligation to pay for the Services.

O. Assignment
Neither party can assign Your order or give or transfer the Services, or an interest in the Services, to another
individual or entity.

P. Other
1. Oracle is an independent contractor, and each party agrees that no partnership, joint venture, or agency
relationship exists between You and Oracle or between Contractor and Oracle.

2. Oracle’s business partners and other third parties, including any third parties with which the Services
have integrations or that are retained by You to provide consulting services, implementation services
or applications that interact with the Services, are independent of Oracle and are not Oracle’s agents.
Oracle is not liable for, bound by, or responsible for any problems with the Services or Your Content
arising due to any acts of any such business partner or third party, unless the business partner or third
party is providing Services as Oracle’s subcontractor on an engagement ordered under these Cloud
STCs and, if so, then only to the same extent as Oracle would be responsible for Oracle’s resources
under these Cloud STCs.

3. Any notice required under your order shall be provided to the other party, and Oracle, in writing. Oracle
may give notices applicable to Oracle’s Services customers by means of a general notice on the Oracle
portal for the Services, and notices specific to You by electronic mail to Your e-mail address on record
in Oracle's account information or by written communication sent by first class mail or pre-paid post to
Your address on record in Oracle's account information.

4. If any term of these Cloud STCs is found to be invalid or unenforceable, the remaining provisions will
remain effective and such term shall be replaced with another term consistent with the purpose and
intent of these Cloud STCs.

5. Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of
form, arising out of or relating to these Cloud STCs may be brought by any party more than six (6)
years after the cause of action has accrued.

6. Prior to entering into an order governed by these Cloud STCs, You are solely responsible for
determining whether the Services meet Your technical, business or regulatory requirements. Oracle
will cooperate with Your efforts to determine whether use of the standard Services are consistent with
those requirements. Additional fees may apply to any additional work performed by Oracle or changes
to the Services. You remain solely responsible for Your regulatory compliance in connection with Your
use of the Services.

7. Upon forty-five (45) days written notice and no more than once every twelve (12) months, Oracle may
audit Your compliance with the terms of these Cloud STCs and Your order. You agree to cooperate
with Oracle's audit and to provide reasonable assistance and access to information. Any such audit
shall not unreasonably interfere with Your normal business operations. Oracle shall comply with
reasonable security and safety rules, policies, and procedures ("security rules") while performing any
such audit, provided that (i) such security rules are applicable to the performance of the audit; (ii) You
make such security rules available to Oracle prior to the commencement of the audit; and (iii) such
security rules do not modify or amend the terms and conditions of these Cloud STCs or the applicable
order(s). Any usage in excess of Your rights shall be considered a change to the scope of Services of
the applicable order and You shall be responsible for paying the additional fees related to use of the
Services in excess of Your rights and issuing an invoice to document the amount of such fees and the
change in the scope of Services.

8. The Uniform Computer Transactions Act does not apply to these Cloud STCs nor any order placed
pursuant to them.

9. The extent to which an Oracle product is, prior to any customizations, capable of providing comparable
access to individuals with disabilities consistent with the applicable provisions of the Architectural and
Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as 'Section
508') effective as of June, 2001, or the Revised version in Appendix A (known as 'Revised Section 508')
effective as of January, 2018 and the Web Content Accessibility Guidelines (WCAG) version 2.0 level
AA, respectively, is indicated by the dependencies, comments and exceptions (some of which may be
significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available
at www.oracle.com/us/corporate/accessibility for each product, when they are used in accordance with
Oracle's associated documents and other written information, and provided that any assistive
technologies and any other products used with them properly interoperate with them. In the event that
no VPAT is available for a particular Oracle product, please contact the Oracle Accessibility Program
Office at accessible_ww@oracle.com. In some cases, the outcome may be that a product is still being
evaluated for accessibility, may be scheduled to meet accessibility standards in a future release, or
may not be scheduled to meet accessibility standards at all. Oracle customers may call Oracle Support
at 1.800.223.1711. Hearing-impaired customers in the U.S. who wish to speak to an Oracle Support
representative may use a telecommunications relay service (TRS). Information about the TRS is
available at http://www.fcc.gov/cgb/consumerfacts/trs.html, and a list of telephone numbers is available
at https://www.fcc.gov/general/telecommunications-relay-services-directory. International hearing-
impaired customers should use the TRS at +1.605.224.1837. An Oracle Support engineer will respond
to technical issues according to the standard service request process. Oracle cannot make any
commitments about future product directions, including plans to address accessibility or the availability
of VPATs. Product direction remains at the sole discretion of Oracle. In entering into an order referencing these STCs, the ordering activity acknowledges that the ordering activity has reviewed the representations provided and referenced in this paragraph and agrees that these representations satisfy the ordering activity’s requirements relating to Section 508 and accessibility (if any) and that no other terms, conditions, statements or any other such representations regarding or related to accessibility shall apply to the Services provided under these Cloud STCs.

10. Internet Protocol version 6 (IPv6). Prior to any customizations, the Oracle product(s) and service(s) to be delivered pursuant to the Contract are capable of accommodating Internet Protocol version 6 (IPv6) solely to the extent defined and noted in the relevant product/service documentation available at oracle.com. Please note that such capabilities are subject to the dependencies, comments and exceptions (some of which may be significant, if any) noted in such documentation, and require that Oracle product(s) and service(s) are used in accordance with Oracle’s associated documents and other written information and that any other products properly interoperate with them. If no relevant product/service documentation is found addressing IPv6, then Oracle makes no representations as to the capabilities of the product/service in question to accommodate IPv6. Oracle cannot make any commitments about future product directions, including plans to address IPv6. Product direction remains at the sole discretion of Oracle. In entering into an order referencing these STCs, the ordering activity acknowledges that the ordering activity has reviewed the representations provided and referenced in this paragraph and agrees that these representations satisfy the ordering activity’s requirements relating to IPv6 (if any) and that no other terms, conditions, statements, requirements or any other such representations regarding or related to IPv6 shall apply to the Services to be delivered pursuant to these Cloud STCs.

11. If any document incorporated by reference into these Cloud STCs contains a provision (a) allowing for the automatic termination of Your Services; (b) allowing for the automatic renewal of Services and/or fees; and/or (c) requiring the governing law to be anything other than Federal law, then such terms shall not apply. If any document incorporated by reference into these Cloud STCs contains an indemnification provision, such provision shall not apply as to the United States indemnifying Oracle or any other party; however, Oracle and Contractor reserve the right to seek indemnification from the U.S. Government should any Federal statute permit such indemnification.
A. Definitions

“You” and “your” refers to the ordering activity that has ordered programs, hardware and/or services from an authorized distributor ("Contractor") under the contract.

The term “ancillary programs” refers to third party materials specified in the program documentation which may only be used for the purposes of installing or operating the programs with which the ancillary programs are delivered.

The term "contract" refers to the Contractor’s GSA Schedule contract.

The term "integrated software" is defined as software embedded in the hardware which is essential to hardware functionality (e.g., firmware).

The term "integrated software options" refers to software or programmable code embedded in, installed on, or activated on the hardware that requires one or more unit licenses that You must separately order. Such separate order shall be priced and/or negotiated in accordance with the applicable GSA Pricelist and Your order will set forth the fees for the integrated software options You are ordering. Not all hardware contains integrated software options; please refer to the Oracle Integrated Software Options License Definitions, Rules and Metrics accessible at http://oracle.com/contracts (the "Integrated Software Options License Rules") for the specific integrated software options that may apply to specific hardware. Oracle reserves the right to designate new software features as integrated software options in subsequent releases and that designation will be specified in the applicable documentation and in the Integrated Software Options License Rules.

The term “operating system” refers to the software that manages hardware for programs and other software.

The term “products” refers to programs, hardware, integrated software and operating system.

The term "program documentation" refers to the program user manual and program installation manuals.

The term “programs” refers to the software products, owned or distributed by Oracle, which you have ordered, including program documentation, and any program updates acquired through technical support.

The term “services” refers to technical support services which you have ordered.

The term “hardware” refers to the hardware equipment, including components, options and spare parts.

The term “hardware documentation” refers to the hardware specifications, user manuals, and installation manuals. Hardware documentation is delivered with the hardware and/or provided online.
B. Hardware Composition

Your hardware order consists of the following items: operating system (as defined in your configuration), integrated software and all hardware equipment (including components, options and spare parts) specified on the applicable order. The hardware equipment or parts of it may be new or like new.

C. Rights Granted

Upon Contractor's acceptance of your order, you have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in your order with Contractor), limited right to use the programs and receive any services you ordered solely for your internal ordering activity operations and subject to the terms of these Hardware STCs, including the Oracle License Definitions and Rules, the order, the contract and the program documentation. You may allow your agents and contractors (including, without limitation, outsourcers) to use the programs for this purpose and you are responsible for their compliance with these Hardware STCs, including the Oracle License Definitions and Rules, the order, the contract and the program documentation in such use. For programs that are specifically designed to allow your customers and suppliers to interact with you in the furtherance of your internal business operations, such use is allowed.

You have the right to use the operating system delivered with the hardware subject to the terms of the license agreement(s) delivered with the hardware. Current versions of the license agreement(s) are located at http://oracle.com/contracts. The parties acknowledge that the terms of this agreement do not apply to such third party technology. You are licensed to use the operating system and any operating system updates acquired through technical support only as incorporated in, and as part of the hardware.

You have the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use integrated software options that You separately order subject to the terms of these Hardware STCs, the applicable documentation and the Integrated Software Options License Rules; the Integrated Software Options License Rules are incorporated in and made a part of these Hardware STCs. You are licensed to use those integrated software options and any integrated software options updates acquired through technical support only as incorporated in, and as part of, the hardware. To fully understand Your license right to any integrated software options that You separately order, You need to review the Integrated Software Options License Rules. In the event of any conflict between the Hardware STCs and the Integrated Software Options License Rules, the Integrated Software Options License Rules shall take precedence.

You have the limited, non-exclusive, royalty free, non-assignable right to use integrated software delivered with the hardware subject to the terms of these Hardware STCs, including the Oracle License Definitions and Rules, the order, the contract and the program documentation. You are licensed to use such integrated software and any integrated software updates acquired through technical support only as incorporated in, and as part of the hardware.

The operating system and/or integrated software may include separate works, identified in a readme file, notice file, or the applicable documentation, which are licensed under open source or similar license terms; your rights to use the operating system and integrated software under such terms are not restricted in any way by these Hardware STCs. The appropriate terms associated with such separate works can be found in the readme files, notice files or in the documentation accompanying the operating system and integrated software.

For GPLv2, LGPLv2.1, GPLv3 and LGPLv3 licensed code received by you as binaries on physical media, if you would like to receive a copy of the source code (“source code”) on media via postal service, submit your written request at <http://oss.oracle.com/systems-opensourcecode >. Alternatively, you can mail your written request to Oracle Corporation, Attn: VP of Legal, Development and Engineering, 500 Oracle Parkway, MS-5OP10, Redwood Shores, CA 94065. Your request should include the name and version number of the product, your name, your company name (if applicable), your return mailing address, and your email address. Certain source distributions require a fee for physical media. Should this be the case, you will be sent details on the cost and payment procedure via email. Your request must be sent within three (3) years of the date of Oracle’s last delivery of the
applicable product. This offer only applies if you received your operating system and/or integrated software on physical media.

The hardware shall be installed in the country that you specify as the delivery location on your purchasing document or when your purchasing document does not indicate a ship to address, the location specified in the order.

D. Ownership and Restrictions
Oracle or its licensors retain all ownership and intellectual property rights to the programs, the operating system, and integrated software. Oracle or its licensors retain all intellectual property rights to the hardware. Oracle retains all ownership and intellectual property rights to anything developed by Oracle and delivered under your order resulting from services. Unless otherwise stated in your order with Contractor, title to hardware, excluding the operating system, integrated software and any other programs, and risk of loss or damages to the hardware will pass from Oracle to the Government upon delivery in accordance with the relevant Incoterms 2010. Title to and ownership of the programs, the operating system and integrated software shall not pass to you or to a third party; title to and ownership of the programs, the operating system and integrated software shall remain with Oracle. You may make a sufficient number of copies of each program for your licensed use and one copy of each program media.

Third party technology that may be appropriate or necessary for use with some Oracle programs is specified in the program documentation or readme files or notice files. The parties acknowledge that the terms of the contract or these Hardware STCs do not apply to such third party technology.

The hardware is not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or operation of a nuclear facility. Use of the hardware for these purposes is prohibited.

You acknowledge that to operate certain hardware your facility must meet a minimum set of requirements as described in the hardware documentation. Such requirements may change from time to time, as communicated by Oracle to you in the applicable hardware documentation.

You may not:

- use the programs in a rental, timesharing, subscription service, hosting or outsourcing capacity;
- remove or modify any program or hardware markings or any notice of Oracle's or its licensors' proprietary rights;
- remove any copyright notices or labels on the operating system or integrated software;
- make the programs, operating system, integrated software or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license, operating system, integrated software or materials from the services you have acquired);
- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the operating system, integrated software, or programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), operating system or integrated software;
- make copies of the operating system or integrated software except for archival purposes, to replace a defective copy, or for program verification; or
- disclose results of any program and/or hardware benchmark tests.
E. Warranties, Disclaimers and Exclusive Remedies

For the sake of clarity, this is the Oracle manufacturer’s warranty; nevertheless, it shall be accessed by you through the Contractor.

Oracle warrants that a program licensed to you will operate in all material respects as described in the applicable program documentation for one year from delivery (i.e. via physical shipment or electronic download). You must notify Oracle of any program warranty deficiency within one year from delivery. ORACLE DOES NOT GUARANTEE THAT (i) THE HARDWARE PRODUCTS, (ii) OPERATING SYSTEM AND INTEGRATED SOFTWARE, AND (iii) THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED, OR THAT ORACLE WILL CORRECT ALL HARDWARE PRODUCTS, OPERATING SYSTEM AND INTEGRATED SOFTWARE, AND PROGRAM ERRORS.

Oracle provides a limited warranty (“Oracle Hardware Warranty”) for (i) the hardware, (ii) the operating system and the integrated software and the integrated software options, and (iii) the operating system media, the integrated software media and the integrated software options media (“media”, and (i), (ii) and (iii) collectively, “Hardware Items”). Oracle warrants that the hardware will be free from, and using the operating system and integrated software and integrated software options will not cause in the hardware, material defects in materials and workmanship for one year from the date the hardware is delivered to You. Oracle warrants that the media will be free from material defects in materials and workmanship for a period of 90 days from the date the media is delivered to You. You may access a more detailed description of the Oracle Hardware Warranty at http://www.oracle.com/us/support/policies/index.html (“Warranty Web Page”). Any changes to the Oracle Hardware Warranty specified on the Warranty Web Page will not apply to hardware or media ordered prior to such change. The Oracle Hardware Warranty applies only to hardware and media that have been (1) manufactured by or for Oracle, and (2) sold by Oracle (either directly or by an Oracle-authorized distributor). The hardware may be new or like new. The Oracle Hardware Warranty applies to hardware that is new and hardware that is like-new which has been remanufactured and certified for warranty by Oracle.

Oracle hardware products may be new or like new. The Oracle Hardware Warranty applies to hardware products that are new and hardware products that are like-new which have been remanufactured and certified for warranty by Oracle.

You may access a more detailed description of the limited hardware warranty at http://www.oracle.com/us/support/policies/index.html (“the warranty web page”). Any changes to the hardware warranty details specified on the warranty web page will not apply to hardware ordered prior to such change.

Parts or components which are replaced under the applicable warranty may not be new. Title in all defective parts which are removed from the hardware under applicable warranty shall transfer back to Oracle.

No warranty will apply to the hardware products, operating system, integrated software or media which has been:

i. modified, altered or adapted without Oracle’s written consent (including modification or removal of the Oracle/Sun serial number tag on the hardware);
ii. maltreated or used in a manner other than in accordance with the relevant documentation;
iii. repaired by any third party in a manner which fails to meet Oracle’s quality standards;
iv. improperly installed by any party other than Oracle or an authorized Oracle certified installation partner;
v. used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use;
vi. relocated, to the extent that problems are attributable to such relocation;
vii. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
viii. used by parties appearing on the most current U.S. export exclusion list;
ix. relocated to countries subject to U.S. trade embargo or restrictions;
x. used remotely to facilitate any activities in the countries referenced in (viii) and (ix) above; or
xi. purchased from any entity other than Oracle or an Oracle authorized reseller.

This Oracle Hardware Warranty does not apply to normal wear of the hardware products or media. The Oracle Hardware Warranty is extended only to the original purchaser or original lessee of the hardware product and may be void in the event that title to the hardware product is transferred.

Oracle also warrants that services will be provided in a professional manner consistent with industry standards. You must notify Oracle of any services warranty deficiencies within 90 days from performance of the deficient services.

To the extent not addressed in your order for the Hardware Products and media to which this Oracle Hardware Warranty applies, the following Limitations apply:

NEITHER ORACLE NOR YOU WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE ARISING OUT OF OR RELATED TO THIS WARRANTY HOWEVER THEY ARISE, WHETHER IN CONTRACT OR TORT, OR OTHERWISE. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) ORACLE’S INDEMNIFICATION OBLIGATION UNDER SECTION H.19 OF THESE STCs; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

YOUR EXCLUSIVE REMEDY AND ORACLE’S ENTIRE LIABILITY FOR BREACH OF WARRANTY SHALL BE: (A) THE REPAIR OR, AT ORACLE’S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE PRODUCT, OR IF SUCH REPAIR OR REPLACEMENT IS NOT REASONABLY ACHIEVABLE, THE REFUND OF THE FEES PAID TO ORACLE FOR THE DEFECTIVE PRODUCT; OR (B) THE REPERFORMANCE OF THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS; OR, (C) IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIAL MANNER, YOU MAY END THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS, TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

F. Technical Support

Technical support consists of annual technical support services you may have ordered or will order for the programs and/or hardware, including support renewals. Support must be ordered pursuant to a valid End User License Agreement such as these Hardware STCs. With respect to technical support for software products, bug fixes, security fixes and any updates received shall be provided under the terms of the license agreement that You accepted upon ordering the programs.

If ordered, annual technical support (including first year and all subsequent years) for programs is provided under Oracle’s technical support policies in effect at the time the services are provided. The technical support policies, incorporated herein, are subject to change at Oracle’s discretion; however, Oracle policy changes will not result in a material reduction in the level of services provided for supported programs during the period for which technical support has been ordered. You should review the policies prior to entering onto an order for the applicable services. You may access the current version of the technical support policies at http://www.oracle.com/us/support/policies/index.html. The technical support policies state that, “global customer support services and systems are not designed to accommodate special security controls that may be required to store or process certain types of sensitive data.” Accordingly, as stated in the technical support policies, You agree not to submit any health, payment card, CUI or other controlled or sensitive data that require protections greater [such as those in DFARS 252.204-7012 or substantively similar requirements] than those specified in the Oracle Global Customer Support Security Practices to Oracle as part of any service request. Software Update License & Support (or any successor technical support offering to Software Update License & Support, “SULS”) acquired with your order may be renewed annually by executing a new Order in writing through
a reseller that is expressly authorized to distribute support renewals. The order with reseller will specify your SULS fee for the first renewal year should you renew SULS for the same number of licenses for the same programs as contained in the original order; If you elect not to purchase technical support at the time that the program is ordered, then you may be required to pay reinstatement fees equal to the amount the lapsed maintenance support fees would have been for the date that support lapsed until the reinstatement date if you decide to purchase technical support at a later date. Technical support for programs is effective upon shipment of tangible media or upon the effective date of the order if shipment of tangible media is not required.

If ordered, Oracle Hardware and Systems Support (including first year and all subsequent years) is provided under Oracle’s Hardware and Systems Support Policies in effect at the time the services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information, and consents that Oracle may require in order to perform the services. The Oracle Hardware and Systems Support Policies, incorporated herein, are subject to change at Oracle’s discretion; however, Oracle will not materially reduce the level of services provided during the period for which Oracle Hardware and Systems Support has been ordered. You should review the policies prior to entering into an order. You may access the current version of the Oracle Hardware and Systems Support Policies at http://www.oracle.com/us/support/policies/index.html. The technical support policies state that, “global customer support services and systems are not designed to accommodate special security controls that may be required to store or process certain types of sensitive data,” Accordingly, as stated in the technical support policies, You agree not to submit any health, payment card, CUI or other controlled or sensitive data that require protections greater [such as those in DFARS 252.204-7012 or substantively similar requirements] than those specified in the Oracle Global Customer Support Security Practices to Oracle as part of any service request.

Oracle Hardware and Systems Support acquired with your order may be renewed annually by executing a new agreement in writing through a reseller that is expressly authorized to distribute support renewals. The order with Contractor will specify your Oracle Hardware and Systems Support fee for the first renewal year should you renew Oracle Hardware and Systems Support for the same systems and same configurations as contained in the original order. If you elect not to purchase technical support at the time that the hardware is ordered, then you may be required to pay reinstatement fees in accordance with Oracle’s technical support policies in effect at the time of reinstatement if you decide to purchase technical support at a later date. Technical support for hardware is effective upon delivery of hardware or upon the effective date of the order if shipment of hardware is not required.

Invoices for technical support services shall be submitted by Contractor on a quarterly basis (unless otherwise specified in the order) after the completion of such period. Technical support services charges for SULS (or any successor technical support offering to SULS) are classified as Software Maintenance as a Service and must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

Notwithstanding anything in Oracle’s technical support policies or Oracle’s Hardware and Systems Support Policies to the contrary, you may discontinue support at the end of any current support term and, at any time thereafter, reinstate support by executing an order for such services with Contractor. If you decide to reinstate such support, you must pay a reinstatement fee. The reinstatement fee shall be the amount that would have been paid by the ordering activity for the past support period had such support not lapsed. In addition to the reinstatement fee described in the preceding sentence, you must pay the support fee for the new support period quarterly in arrears in accordance with the order. This technical support fee for the new support period is computed as follows: (i) if support lapsed, then the support fee for a twelve month support period shall be the last annual support fee paid for the relevant program and/or hardware system; (ii) if you never acquired technical support for the relevant program and/or hardware system, then the annual support fee shall be the fee that would have been charged if support had been ordered originally for the relevant program and/or hardware system per Oracle’s Support pricing policies in effect at the time of reinstatement. Renewal adjustments may be applied to the annual support fee described in (i) and (ii) above.
G. Intellectual Property Indemnification

If someone makes a claim against you that any information, design, specification, instruction, software, data, or material ("Material") furnished by Oracle and used by you infringes its intellectual property rights (including U.S. or foreign patent, trademark and copyright), Oracle will indemnify you against the claim to the extent permitted by law if you do the following:

- Notify Oracle promptly in writing, not later than 30 days after you receive notice of the claim;
- Give Oracle control of the defense, with input from you, and any settlement negotiations, provided that for the U.S. Government the control of the defense and settlement is subject to 28 U.S.C. 516; and
- Give Oracle the information, authority, and assistance Oracle needs to defend against or settle the claim.

If Oracle believes or it is determined that any of the Material may have violated someone else's intellectual property rights, Oracle may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Oracle may end the license for, and require return of, the applicable Material. Oracle's right to end the license or request termination of the order in accordance with this paragraph shall not apply if you authorize or consent to use of the Material, and in such cases, Oracle shall have no obligation to indemnify or other liability whatsoever, to you or to third parties for infringement, and the exclusive cause of action and remedy for infringement shall be in accordance with 28 U.S.C. 1498, as set forth in 48 C.F.R. 27.201-1(a). Oracle will not indemnify you if you alter the Material or use it outside the scope of use identified in Oracle's user documentation or if you use a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to you, or if you continue to use the applicable Material after the end of the license to use that Material. Oracle will not indemnify you to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Oracle. Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Oracle. Oracle will not indemnify you for infringement caused by your actions against any third party if the Oracle program(s) as delivered to you and used in accordance with the terms of the order and these Hardware STCs would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of your order with Contractor (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of your order with Contractor.

Notwithstanding the provisions of the paragraph above and with respect to hardware only, if Oracle believes or it is determined that the hardware (or portion thereof) may have violated a third party's intellectual property rights, Oracle may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, Oracle may remove the applicable hardware (or portion thereof) and refund the net book value.

In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the license for, and require return of, the program associated with that Separately Licensed Third Party Technology and shall refund any program license fees You may have paid to Oracle for the program.

For claims related to hardware, if you are a current subscriber to Oracle technical support services for the operating system (e.g., Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems or Oracle Linux Premier Support), then for the period of time for which you are/were a subscriber to the applicable Oracle technical support services (i) the phrase "Material" under this section shall include the operating system and the integrated software and (ii) the phrase "program(s)" in this section is replaced by the phrase "program(s) or the operating system or integrated software (as
applicable)" (i.e., Oracle will not indemnify you for your use of the operating system and/or integrated software when you are/were not a subscriber to the applicable Oracle technical support services). Notwithstanding the foregoing, with respect solely to the Oracle Linux operating system, Oracle will not indemnify you for materials that are not part of the Oracle Linux covered files as defined at http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf.

H. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE, CONTRACTOR’S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO AN ORDER ISSUED PURSUANT TO THESE HARDWARE STCs, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID CONTRACTOR UNDER THE RELEVANT ORDER, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PROGRAMS, HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID CONTRACTOR FOR THE DEFICIENT PROGRAM, HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE OR SERVICES GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) ORACLE’S INDEMNIFICATION OBLIGATION UNDER SECTION 1.20 OF THESE STCs; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

I. Other
1. Oracle programs, including the operating system, integrated software, any programs installed on the hardware and/or documentation, delivered in accordance with the terms and conditions of the contract are “commercial computer software” pursuant to the applicable Federal Acquisition Regulation (“FAR”). Pursuant to FAR 12.212(b), use, duplication, disclosure, modification, and adaptation of the programs, including the operating system, integrated software, any programs installed on the hardware, and/or documentation, shall be subject to these Hardware STCs.

2. You may not assign orders or give or transfer the programs, the operating system, the integrated software and/or any services or an interest in them to another individual or entity. If you grant a security interest in the programs, the operating system, the integrated software and/or any services deliverables, the secured party has no right to use or transfer the programs, the operating system, the integrated software and/or any services deliverables, and if you decide to finance your acquisition of hardware, programs and/or any services, you will follow Oracle’s policies regarding financing which are at http://oracle.com/contracts. The foregoing shall not be construed to limit the rights you may otherwise have with respect to the Linux operating system, third party technology or separate works licensed under open source or similar license terms.

3. In entering into an order under the contract, you agree and acknowledge that you have not relied on the future availability of any hardware, program or updates. However, (a) if you order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the relevant order, if and when available, in accordance with Oracle’s then current technical support policies, and (b) the preceding sentence does not change the rights granted to you for any program licensed under the order, per the terms of these Hardware STCs.

4. Accessibility
The extent to which an Oracle product is, prior to any customizations, capable of providing comparable access to individuals with disabilities consistent with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as ‘Section 508’) effective as of June, 2001, or the Revised version in Appendix A (known as ‘Revised Section 508’) effective as of January, 2018 and the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA, respectively, is indicated by the dependencies, comments and exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available at www.oracle.com/us/corporate/accessiblity for each product, when they are used in accordance with Oracle’s associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with them. In the event that no VPAT is available for a particular Oracle
product, please contact the Oracle Accessibility Program Office at accessible_ww@oracle.com. In some cases, the outcome may be that a product is still being evaluated for accessibility, may be scheduled to meet accessibility standards in a future release, or may not be scheduled to meet accessibility standards at all. Oracle customers may call Oracle Support at 1,800,223,1711. Hearing-impaired customers in the U.S. who wish to speak to an Oracle Support representative may use a telecommunications relay service (TRS). Information about the TRS is available at http://www.fcc.gov/cgb/consumerfacts/trs.html, and a list of telephone numbers is available at https://www.fcc.gov/general/telecommunications-relay-services-directory. International hearing-impaired customers should use the TRS at +1,605,224,1837. An Oracle Support engineer will respond to technical issues according to the standard service request process. Oracle cannot make any commitments about future product directions, including plans to address accessibility or the availability of VPATs. Product direction remains at the sole discretion of Oracle. In entering into an order referencing these STCs, the ordering activity acknowledges that the ordering activity has reviewed the representations provided and referenced in this paragraph and agrees that these representations satisfy the ordering activity’s requirements relating to Section 508 and accessibility (if any) and that no other terms, conditions, statements or any other such representations regarding or related to accessibility shall apply to the Oracle products provided under these Hardware STCs.

5. Internet Protocol version 6 (IPv6)
Prior to any customizations, the Oracle product(s) and service(s) to be delivered pursuant to the contract are capable of accommodating Internet Protocol version 6 (IPv6) solely to the extent defined and noted in the relevant product/service documentation available at oracle.com. Please note that such capabilities are subject to the dependencies, comments and exceptions (some of which may be significant, if any) noted in such documentation, and require that Oracle product(s) and service(s) are used in accordance with Oracle’s associated documents and other written information and that any other products properly interoperate with them. If no relevant product/service documentation is found addressing IPv6, then Oracle makes no representations as to the capabilities of the product/service in question to accommodate IPv6. Oracle cannot make any commitments about future product directions, including plans to address IPv6. Product direction remains at the sole discretion of Oracle. In entering into an order referencing these STCs, the ordering activity acknowledges that the ordering activity has reviewed the representations provided and referenced in this paragraph and agrees that these representations satisfy the ordering activity’s requirements relating to IPv6 (if any) and that no other terms, conditions, statements, requirements or any other such representations regarding or related to IPv6 shall apply to the Oracle products and services to be delivered pursuant to these Hardware STCs.

6. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the programs and hardware (including any integrated software and operating system(s)). You agree that such export laws govern your use of the programs (including technical data), hardware (including any integrated software and operating system(s)) and any services deliverables provided under your order, and you agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information, program, hardware (including any integrated software and operating system(s)) and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology. You shall include the following notice on packing lists, commercial invoices, shipping documents and other documents involved in the transfer, export or re-export of the programs and hardware (including any integrated software and operating system(s)): “These commodities, technology, software, or hardware (including any integrated software and operating system(s)) were exported in accordance with U.S. Export Administration Regulations and applicable export laws. Diversion contrary to applicable export laws is prohibited.

7. Oracle, as the owner of the intellectual property of the program licenses and the technical support services, is a third party beneficiary of the contract and the orders for Oracle products issued pursuant to the contract, but does not assume any of the Oracle authorized reseller’s obligations thereunder.
8. The Uniform Computer Information Transactions Act does not apply to these Hardware STCs nor any order placed pursuant to them.

9. You understand that the Contractor and Oracle’s business partners, including any third party firms retained by you to provide computer consulting services, are independent of Oracle and are not Oracle’s agents. Oracle is not bound by any acts of any such entity, unless the entity is providing services as an Oracle subcontractor under an engagement ordered directly with Oracle.

10. You may order trial programs, or Oracle may include additional programs with your order with Contractor which you may use for trial, non-production purposes only. You may not use the trial programs to provide or attend third party training on the content and/or functionality of the programs. You have 30 days from the delivery date to evaluate these programs. If you decide to use any of these programs after the 30-day trial period, you must obtain a license for such programs from Oracle or an authorized distributor. If you decide not to obtain a license for any program after the 30 day trial period, you will cease using and delete any such programs from your computer systems. Programs licensed for trial purposes are provided “as is” and Oracle does not provide technical support or offer any warranties for these programs.

11. Oracle may include additional programs on the hardware (e.g., Exadata Storage Server software). You are not authorized to use those programs unless you have a license specifically granting you the right to do so; however, you may use programs for trial, non-production purposes for up to 30 days from the date of delivery provided that such use is subject to the terms for trial programs in the contract, including these Hardware STCs.

12. Unless otherwise agreed in an order, upon 45 days written notice and no more than once annually, Oracle may audit your use of the programs. You agree to cooperate with Oracle’s audit, provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. Oracle shall comply with reasonable security and safety rules, policies, and procedures (“security rules”) while performing any such audit, provided that such security rules are applicable to the performance of the audit; you make such security rules available to Oracle prior to the commencement of the audit; and such security rules do not modify or amend the terms and conditions of the contract or the applicable order. You shall be responsible for either discounting any non-compliant use or paying any underpaid fees that Oracle or the Contractor invoices you for related to use of the programs. Oracle shall not be responsible for any costs incurred by you in cooperating with the audit.

13. Upon termination of a program license, you are required to discontinue use and destroy or return to the Contractor all copies of the programs and program documentation associated with the terminated license.

14. Source code may be delivered as part of the standard delivery for particular programs, operating system or integrated software; all such source code is subject to the terms of these Hardware STCs, including the Oracle License Definitions and Rules, the applicable order, the contract and the applicable program documentation.

15. Oracle’s Applications Licensing Table in effect as of the effective date of your order is available at [http://oracle.com/us/corporate/contracts](http://oracle.com/us/corporate/contracts). Oracle reserves the right to periodically change the information presented on the website provided above. All information on this website is provided “as-is” without warranty of any kind, either express or implied. The version of the Oracle Application Licensing Table incorporated into an order shall apply to any licenses purchased under the order unless modified by a mutually agreeable contract modification.

16. Oracle’s License Definitions and Rules in effect as of the effective date of your order are available at [https://www.oracle.com/corporate/contracts](https://www.oracle.com/corporate/contracts). Oracle’s Integrated Software Options License Definitions, Rules and Metrics as well as Terms for Oracle Solaris are available at [http://www.oracle.com/us/corporate/contracts](http://www.oracle.com/us/corporate/contracts). Oracle reserves the right to periodically change the information presented on the website provided above. All information on this website is
provided “as-is” without warranty of any kind, either express or implied. The version of the Oracle License Definition and Rules incorporated into an order shall apply to the licenses purchased under the order unless modified by a mutually agreeable contract modification. If any provision herein or document incorporated by reference into these Hardware STCs, including the License Definitions and Rules and terms included and/or referenced therein, contains a provision (a) allowing for the automatic termination of your technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) specifying jurisdiction and venue of any action, then, such terms shall not apply with respect to the U.S. Government. If any document incorporated by reference into these Hardware STCs, including the License Definitions and Rules and terms included and/or referenced therein, contains an indemnification provision, such indemnification provision shall not apply as to the United States indemnifying Oracle or any other party; however, Oracle reserves the right to seek indemnification from the U.S. Government should Federal statute permit such indemnification.

17. Products and Service Offerings deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Service Offerings deliverables in such applications.

18. For software (i) that is part of programs, operating systems, integrated software or integrated software options (or all four) and (ii) that You receive from Oracle in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code from https://oss.oracle.com/sources/ or http://www.oracle.com/goto/opensourcecode. If the source code for such software was not provided to You with the binary, You may also receive a copy of the source code on physical media by submitting a written request pursuant to the instructions in the “Written Offer for Source Code” section of the latter website.

19. Oracle (“Indemnitor”) agrees to defend and indemnify You (“Indemnitee”) against any and all claims of bodily injury and/or tangible personal property damage resulting from negligent or intentionally wrongful actions or omissions of the Indemnitee or a person employed by the Indemnitor (i.e., as an employee or subcontractor) while performing or participating in onsite services to install hardware, purchased under an order incorporating these STCs, if such actions or omissions were not proximately caused by the action or omission of the Indemnitee or any third party; provided however, that (a) the Indemnitee notifies the Indemnitor promptly in writing, not later than thirty (30) days after Indemnitee receives notice of the claim (or sooner if required by law); (b) the Indemnitee gives the Indemnitor sole control of the defense and any settlement negotiations, provided that the control of the defense and settlement with respect to the U.S. Government shall be is subject to 28 U.S.C. 516; and (c) the Indemnitee gives the Indemnitor the information, authority, and assistance the Indemnitor needs to defend against or settle the claim. As used in this section, the term “tangible personal property” shall not include software, documentation, data or data files. The Indemnitor shall have no liability for any claim of bodily injury and/or tangible personal property damage arising from use of software or hardware. This section states Oracle’s entire liability and exclusive remedy for bodily injury and property damage.
ORACLE SOFTWARE PROGRAMS AND/OR SERVICES
GSA SUPPLEMENTAL TERMS AND CONDITIONS v103119

THESE ORACLE SOFTWARE PROGRAM AND/OR SERVICES GSA SUPPLEMENTAL TERMS AND CONDITIONS ("GSA STCs") SHALL APPLY TO THE ORACLE SOFTWARE PROGRAMS AND/OR SERVICES THAT YOU ORDER FROM THE CONTRACTOR (THE "CONTRACTOR") UNDER THE CONTRACTOR'S GSA SCHEDULE CONTRACT ("THE CONTRACT"). THESE SOFTWARE STCs SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN ANY NON-ORACLE ORDER OR ORDERING DOCUMENTATION. THESE SOFTWARE STCs ARE CONSIDERED PART OF THE SCHEDULE OF SUPPLIES/SERVICES IN YOUR ORDER TO THE CONTRACTOR.

A. Definitions

"You" and "your" refers to the ordering activity that has ordered programs, and/or services from an authorized distributor ("Contractor") under the contract.

The term "ancillary programs" refers to third party materials specified in the program documentation which may only be used for the purposes of installing or operating the programs with which the ancillary programs are delivered.

The term "contract" refers to the Contractor's GSA Schedule contract.

The term "program documentation" refers to the program user manual and program installation manuals.

The term "programs" refers to the software products owned or distributed by Oracle which you have ordered, program documentation, and any program updates acquired through technical support.

The term "services" refers to annual technical support services which you have ordered.

B. Rights Granted

Upon Contractor's acceptance of your order, you have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in your order with Contractor), limited right to use the programs and receive any services you ordered solely for your internal ordering activity operations and subject to the terms of these Software STCs, including the Oracle License Definitions and Rules, the order, the contract and the program documentation. You may allow your agents and contractors (including, without limitation, outsourcers) to use the programs for this purpose and you are responsible for their compliance with these Software STCs, including the Oracle License Definitions and Rules, the order, the contract and the program documentation in such use. For programs that are specifically designed to allow your customers and suppliers to interact with you in the furtherance of your internal business operations, such use is allowed.

C. Ownership and Restrictions

Oracle or its licensors retain all ownership and intellectual property rights to the programs. Oracle retains all ownership and intellectual property rights to anything developed by Oracle and delivered under your order resulting from services. You may make a sufficient number of copies of each program for your licensed use and one copy of each program media.

Third party technology that may be appropriate or necessary for use with some Oracle programs is specified in the program documentation. Such third party technology is licensed to you under the terms
of the third party technology license agreement specified in the program documentation and not under the terms of the contract or these Software STCs. The parties acknowledge that the terms of this agreement do not apply to such third party technology.

You may not:

- use the programs in a rental, timesharing, subscription service, hosting or outsourcing capacity;
- remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;
- make the programs or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);
- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), operating system or integrated software; or
- disclose results of any program benchmark tests.

D. Warranties, Disclaimers and Exclusive Remedies

For the sake of clarity, this is the Oracle manufacturer's warranty; nevertheless, it shall be accessed by you through the Contractor.

Oracle warrants that a program licensed to you will operate in all material respects as described in the applicable program documentation for one year from delivery (i.e., via physical shipment or electronic download). You must notify Oracle of any program warranty deficiency within one year from delivery. ORACLE DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED, OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS.

Oracle also warrants that services will be provided in a professional manner consistent with industry standards. You must notify Oracle of any services warranty deficiencies within 90 days from performance of the deficient services.

FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALMALLY REASONABLE MANNER YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES PAID TO ORACLE FOR THE PROGRAM LICENSE DISTRIBUTED TO YOU; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES PROVIDED BY ORACLE; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALMALLY REASONABLE MANNER, YOU MAY END THOSE SERVICES AND RECOVER THE FEES PAID TO ORACLE FOR THE DEFICIENT SERVICES PROVIDED BY ORACLE TO YOU. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WITH RESPECT TO THE ABOVE ITEMS, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

E. Technical Support

Technical support consists of annual technical support services you may have ordered or will order for the programs, including support renewals. Support must be ordered pursuant to a valid End User License Agreement such as these Software STCs. Bug fixes, security fixes and any updates received shall be provided under the terms of the license agreement that You accepted upon ordering the programs.
If ordered, annual technical support (including first year and all subsequent years) for programs is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies, incorporated herein, are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of services provided for supported programs during the period for which technical support has been ordered. You should review the policies prior to entering into an order for the applicable services. You may access the current version of the technical support policies at [http://www.oracle.com/us/support/policies/index.html](http://www.oracle.com/us/support/policies/index.html). The technical support policies state that, "global customer support services and systems are not designed to accommodate special security controls that may be required to store or process certain types of sensitive data." Accordingly, as stated in the technical support policies, You agree not to submit any health, payment card, CUI or other controlled or sensitive data that require protections greater [such as those in DFARS 252.204-7012 or substantively similar requirements] than those specified in the Oracle Global Customer Support Security Practices to Oracle as part of any service request. Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with your order may be renewed annually through a reseller that is expressly authorized to distribute support renewals. The order with Contractor will specify your SULS fee for the first renewal year should you renew SULS for the same number of licenses for the same programs as contained in the original order; If you elect not to purchase technical support at the time that the program is ordered, then you may be required to pay reinstatement fees equal to the amount the lapsed maintenance support fees would have been for the date that support lapsed until the reinstatement date if you decide to purchase technical support at a later date. Technical support for programs is effective upon shipment of tangible media or upon the effective date of the order if shipment of tangible media is not required.

Invoices for technical support services shall be submitted by Contractor on a quarterly basis (unless otherwise specified in the order) after the completion of such period. Technical support services charges for SULS (or any successor technical support offering to SULS) are classified as Software Maintenance as a Service and must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

Notwithstanding anything in Oracle's technical support policies to the contrary, you may discontinue technical support at the end of any current technical support term and, at any time thereafter, reinstate technical support by executing an order for such services with Contractor. If you decide to reinstate technical support, you must pay a reinstatement fee. The reinstatement fee shall be the amount that would have been paid by the ordering activity for the past support period had technical support not lapsed. In addition to the reinstatement fee described in the preceding sentence, you must pay the technical support fee for the new support period. This technical support fee for the new support period is computed as follows: (i) if technical support lapsed, then the technical support fee for a twelve month support period shall be the last annual technical support fee you paid for the relevant program; (ii) if you never acquired technical support for the relevant program, then the annual technical support fee shall be the fee that would have been charged if support had been ordered originally for the relevant program per Oracle’s Support pricing policies in effect at the time of reinstatement. Renewal adjustments may be applied to the annual support fee described in (i) and (ii) above.

F. Intellectual Property Indemnification

If someone makes a claim against you, including the U.S. Government, and its officers, employees and agents, or Oracle ("Recipient", which may refer to you or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, or material ("Material") furnished by either you or Oracle ("Provider", which may refer to you or Oracle depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights
(including U.S. or foreign patent, trademark and copyright), the Provider will indemnify the Recipient against the claim to the extent permitted by law if the Recipient does the following:

- Notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim;
- Gives the Provider control of the defense, with input from Recipient, and any settlement negotiations, provided that for the U.S. Government the control of the defense and settlement is subject to 28 U.S.C. 516; and
- Gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated someone else’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid for it. If you are the Provider and such return materially affects Oracle’s ability to meet its obligations under the relevant order (e.g., impairs Oracle’s ability to perform due to a work statement, schedule or cost impact), then Oracle may, at its option and upon 30 days prior written notice, request termination of the order. Oracle’s right to end the license or request termination of the order in accordance with this paragraph shall not apply if the U.S. Government authorizes or consents to use of the Material, and in such cases, Oracle shall have no obligation to indemnify or other liability whatsoever, to the Government or to third parties for infringement, and the exclusive cause of action and remedy for infringement shall be in accordance with 28 U.S.C. 1498, as set forth in 48 C.F.R. 27.201-1(a). The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider’s user documentation or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Oracle. Oracle will not indemnify you for infringement caused by your actions against any third party if the Oracle program(s) as delivered to you and used in accordance with the terms of the order and the Software STCs would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of your order with Contractor (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of your order with Contractor.

With respect to the U.S. Government, the foregoing indemnification shall not apply as to the United States indemnifying Oracle or any other party; however, Oracle reserves the right to seek indemnification from the U.S. Government in accordance with the preceding paragraphs should Federal statute permit such indemnification.

This section provides the parties’ exclusive remedy for any infringement claims or damages.

G. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. CONTRACTOR’S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO AN ORDER ISSUED PURSUANT TO THESE SOFTWARE STCs, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID CONTRACTOR UNDER THE RELEVANT ORDER, AND IF SUCH DAMAGES RESULT FROM YOUR
USE OF PROGRAMS, HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID CONTRACTOR FOR THE DEFICIENT PROGRAM, HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE OR SERVICES GIVING RISE TO THE LIABILITY. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) FRAUD, OR (2) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

H. Other

1. Oracle programs, including the operating system, integrated software, any programs installed on the hardware and/or documentation, delivered in accordance with the terms and conditions of the contract are “commercial computer software” pursuant to the applicable Federal Acquisition Regulation (“FAR”). Pursuant to FAR 12.212(b), use, duplication, disclosure, modification, and adaptation of the programs, including the operating system, integrated software, any programs installed on the hardware, and/or documentation, shall be subject to these Software STCs.

2. You may not assign orders or give or transfer the programs and/or any services or an interest in them to another individual or entity. If you grant a security interest in the programs and/or any services deliverables, the secured party has no right to use or transfer the programs and/or any services deliverables, and if you decide to finance your acquisition of programs and/or any services, you will follow Oracle’s policies regarding financing which are at http://oracle.com/contracts. The foregoing shall not be construed to limit the rights you may otherwise have with respect to the Linux operating system, third party technology or separate works licensed under open source or similar license terms.

3. In entering into an order under the contract, you agree and acknowledge that you have not relied on the future availability of any program or updates. However, (a) if you order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the relevant order, if and when available, in accordance with Oracle’s then current technical support policies, and (b) the preceding sentence does not change the rights granted to you for any program licensed under the order, per the terms of these Software STCs.

4. Accessibility

The extent to which an Oracle product is, prior to any customizations, capable of providing comparable access to individuals with disabilities consistent with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as ‘Section 508’) effective as of June, 2001, or the Revised version in Appendix A (known as ‘Revised Section 508’) effective as of January, 2018 and the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA, respectively, is indicated by the dependencies, comments and exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available at www.oracle.com/us/corporate/accessibility for each product, when they are used in accordance with Oracle’s associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with them. In the event that no VPAT is available for a particular Oracle product, please contact the Oracle Accessibility Program Office at accessible_ww@oracle.com. In some cases, the outcome may be that a product is still being evaluated for accessibility, may be scheduled to meet accessibility standards in a future release, or may not be scheduled to meet accessibility standards at all. Oracle customers may call Oracle Support at 1.800.223.1711. Hearing-impaired customers in the U.S. who wish to speak to an Oracle Support representative may use a telecommunications relay service (TRS). Information about the TRS is available at http://www.fcc.gov/cgb/consumerfacts/trs.html, and a list of telephone numbers is available at https://www.fcc.gov/general/telecommunications-relay-services-directory. International hearing-impaired customers should use the TRS at +1.605.224.1837. An Oracle Support engineer will respond to technical issues according to the standard service request process. Oracle cannot make any
commitments about future product directions, including plans to address accessibility or the availability of VPATs. Product direction remains at the sole discretion of Oracle. In entering into an order referencing these STCs, the ordering activity acknowledges that the ordering activity has reviewed the representations provided and referenced in this paragraph and agrees that these representations satisfy the ordering activity’s requirements relating to Section 508 and accessibility (if any) and that no other terms, conditions, statements or any other such representations regarding or related to accessibility shall apply to the Oracle products provided under these Software STCs.

5. Internet Protocol version 6 (IPv6).
Prior to any customizations, the Oracle product(s) and service(s) to be delivered pursuant to the contract are capable of accommodating Internet Protocol version 6 (IPv6) solely to the extent defined and noted in the relevant product/service documentation available at oracle.com. Please note that such capabilities are subject to the dependencies, comments and exceptions (some of which may be significant, if any) noted in such documentation, and require that Oracle product(s) and service(s) are used in accordance with Oracle’s associated documents and other written information and that any other products properly interoperate with them. If no relevant product/service documentation is found addressing IPv6, then Oracle makes no representations as to the capabilities of the product/service in question to accommodate IPv6. Oracle cannot make any commitments about future product directions, including plans to address IPv6. Product direction remains at the sole discretion of Oracle. In entering into an order referencing these STCs, the ordering activity acknowledges that the ordering activity has reviewed the representations provided and referenced in this paragraph and agrees that these representations satisfy the ordering activity’s requirements relating to IPv6 (if any) and that no other terms, conditions, statements or any other such representations regarding or related to IPv6 shall apply to the Oracle products provided under these Software STCs.

6. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the programs. You agree that such export laws govern your use of the programs (including technical data), and any services deliverables provided under your order, and you agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information, program, and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

7. Oracle, as the owner of the intellectual property of the program licensed and the technical support services, is a third party beneficiary of the contract and the orders for Oracle products issued pursuant to the contract, but does not assume any of the Oracle authorized reseller’s obligations thereunder.

8. The Uniform Computer Information Transactions Act does not apply to these Software STCs nor any order placed pursuant to them.

9. You understand that the Contractor and Oracle’s business partners, including any third party firms retained by you to provide computer consulting services, are independent of Oracle and are not Oracle’s agents. Oracle is not bound by any acts of any such entity, unless the entity is providing services as an Oracle subcontractor under an engagement ordered directly with Oracle.

10. You may order trial programs, or Oracle may include additional programs with your order with Contractor which you may use for trial, non-production purposes only. You may not use the trial programs to provide or attend third party training on the content and/or functionality of the programs. You have 30 days from the delivery date to evaluate these programs. If you decide to use any of these programs after the 30-day trial period, you must obtain a license for such programs from Oracle or an authorized distributor. If you decide not to obtain a license for any program after the 30 day trial period, you will cease using and delete any such programs from your computer systems. Programs licensed for trial purposes are provided “as is” and Oracle does not provide technical support or offer any warranties for these programs.
Unless otherwise agreed in an order, upon 45 days written notice, and no more than once annually, Contractor may audit your use of the programs. You agree to cooperate with Contractor’s audit, provide reasonable assistance and access to information and permit Contractor to report the audit results to Oracle. Any such audit shall not unreasonably interfere with your normal business operations. Contractor shall comply with reasonable security and safety rules, policies, and procedures (“security rules”) while performing any such audit, provided that such security rules are applicable to the performance of the audit; you make such security rules available to Contractor prior to the commencement of the audit; and such security rules do not modify or amend the terms and conditions of the Contract or the applicable order. You shall be responsible for either for discontinuing noncompliant use or paying any underpaid fees related to use of the programs, and Oracle or the Contractor, as the case may be, shall submit an invoice to document the amount of such fees. Contractor may assign its right to audit your use of the programs to Oracle. If the Contractor assigns its right to audit your use of the programs to Oracle, then neither You nor Oracle shall be responsible for any costs incurred by either you or Contractor in cooperating with the audit.

11. Upon termination of a program license, you are required to discontinue use and destroy or return to the Contractor all copies of the programs and program documentation associated with the terminated license.

12. Source code maybe delivered as part of the standard delivery for particular programs; all such source code is subject to the terms of these Software STCs, including the Oracle License Definitions and Rules, the applicable order, the contract and the applicable program documentation.

13. Programs and service deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Service Offerings deliverables in such applications.

14. For software (i) that is part of Programs, Operating Systems, Integrated Software or Integrated Software Options (or all four) and (ii) that You receive from Oracle in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code from https://oss.oracle.com/sources/ or http://www.oracle.com/goto/opensourcecode. If the source code for such software was not provided to You with the binary, You may also receive a copy of the source code on physical media by submitting a written request pursuant to the instructions in the “Written Offer for Source Code” section of the latter website.

15. Oracle’s Applications Licensing Table in effect as of the effective date of your order is available at http://oracle.com/us/corporate/contracts. Oracle reserves the right to periodically change the information presented on the website provided above. All information on this website is provided “as-is” without warranty of any kind, either express or implied. The version of the Oracle Application Licensing Table incorporated into an order shall apply to the licenses purchased under the order unless modified by a mutually agreeable contract modification.

16. Oracle’s License Definitions and Rules in effect as of the date of your order are available at https://www.oracle.com/corporate/contracts. Oracle reserves the right to periodically change the information presented on the website provided above. All information on this website is provided “as-is” without warranty of any kind, either express or implied. The version of the Oracle License Definitions and Rules incorporated into an order shall apply to the licenses purchased under the order unless modified by a mutually agreeable contract modification.

If any document incorporated by reference into these Software STCs, including the License Definitions and Rules and terms included and/or referenced therein, contains a provision (a) allowing for the automatic termination of your license rights or technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law, and/or (d) directly conflicts with terms as provided in General Services Administration Acquisition
Regulation (GSAR) 552.232-78 then, such terms shall not apply, except that GSAR 552.232.78 (a)(4) shall not impair any rights or remedies Oracle may have with respect to Your nonpayment of fees, Your unauthorized use of software or services, or Your violation of any of Oracle's proprietary rights, including intellectual property rights. If any document incorporated by reference into these Software STCs, including the License Definitions and Rules and terms included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying Oracle or any other party; however, Oracle reserves the right to seek indemnification from the U.S. Government in accordance with the terms of section F above should Federal statute permit such indemnification.
EXHIBIT A

Microsoft Cloud Agreement
US Government Community Cloud

This Microsoft Cloud Agreement is incorporated into the Customer Agreement entered into between the Ordering Activity under GSA Schedule contracts customer who is a Community member (“Customer” or “Ordering Activity”) and the person or entity who has entered into a prime contract with the Customer (“Contractor”) as an addendum and governs Customer's use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the “agreement”). It is effective on the date that the Contractor provisions the Customer's Subscription. Key terms are defined in Section 9.

1. Grants, rights and terms.

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

a. Software. Upon acceptance of each order, Microsoft grants Customer a limited right to usethe Software in the quantities ordered.

(i) Use Rights. The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

(ii) Temporary and perpetual licenses. Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.

b. Online Services. Customer may use the Online Services as provided in this agreement.

(i) Online Services Terms. The Online Services Terms in effect when Customer orders or renews a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.

(ii) Suspension. Microsoft may temporarily suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.

(iii) End Users. Customer controls access by End Users and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.

(iv) Customer Data. Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to
Customer’s use of the Product other than as expressly set forth in this agreement or as required by applicable law.

(v) **Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer’s use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer’s accounts or authentication credentials or any security incident related to the Online Services.

c. **Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

a. **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft’s intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer’s use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

b. **Preview releases.** Microsoft may make Previews available. Previews are provided “as-is,” “with all faults,” and “as-available,” and are excluded from the SLA and all limited warranties provided in this agreement. Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into “General Availability.”

c. **Verifying compliance for Products.**

(i) **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products’ license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including, subject to the Government’s reasonable security requirements, access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft’s self-audit process, which Microsoft may request as an alternative to a third-party audit. Such an audit request shall not occur more than once in a twelve month period.

(ii) **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then Customer will, within 30 days, order sufficient licenses to cover any unlicensed use of products and Contractor will invoice Customer for additional license fees sufficient to cover the unauthorized use revealed by the audit and payment will be due 30 days after receipt of the invoice. If unlicensed use or distribution is 5% or more, the Customer may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Customer from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.
(iii) **Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers’ compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification is subject to the Government’s reasonable security requirements, will take place during normal business hours, and in a manner that does not unreasonably interfere with Customer’s operations.

2. **Subscriptions, ordering.**

   a. **Available Subscription offers.** The Subscription offers available to Customer will be established by the Customer Agreement and generally can be categorized as one or a combination of the following:

      (i) **Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

      (ii) **Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.

      (iii) **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

      (iv) **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

   b. **Ordering.**

      (i) Orders must be placed through the Contractor. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer’s internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer’s Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be responsible for any actions of such Affiliates or third parties related to their use of the Products.

      (ii) The Contractor may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription...

   a. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Customer shall obtain the users’ consent to the same.
b. Customer appoints the Contractor as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

5. Warranties.

a. Limited warranty.

(i) Software. Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.

(ii) Online Services. Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer’s use. Customer’s remedies for breach of this warranty are in the SLA. The remedies above are Customer’s sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

b. Exclusions. The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

c. Disclaimer. Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.


(i) By Microsoft. Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer’s license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer’s continued use of a Product or Fix after being notified to stop due to a third-party claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

(ii) Customer’s agreement. Customer agrees that use of Customer Data or non-Microsoft software Microsoft provides or otherwise makes available on Customer’s behalf will not infringe any third party’s patent, copyright or trademark or make unlawful use of any third party’s trade secret. In addition, Customer will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

(iii) Rights and remedies in case of possible infringement or misappropriation. If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Customer’s use of the Product or Fix, Microsoft will seek to obtain the right for Customer to keep using it or
modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Customer’s right to the Product or Fix and refund any amounts Customer has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

(iv) Other terms. Customer must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft control over the defense and settlement (provided that for any Federal Agency Customers, the control of the defense and settlement is subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in helping. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Customers, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

7. Limitation of liability.

For each Product, each party’s maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

i. Online Services. For Online Services, Microsoft’s maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft’s aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.

ii. Free Products and distributable code. For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s liability is limited to direct damages finally awarded up to US$5,000.

iii. Exclusions. In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.

iv. Exceptions. The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties’ obligations under section 6; (2) violation of the other’s intellectual property rights,

For Customers that are Federal Agencies, this Section shall not impair the Customer’s right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

8. ITAR Covered Services. This section applies to only the ITAR Covered Services, defined below, Customer buys subject to this Agreement. These terms only apply if Customer provides express notice to Microsoft of Customer’s intent to manage ITAR controlled data in the Customer Data during the eligibility validation phase of the online application process.

a. Customer Prerequisites:

(i) Customer is responsible for ensuring that the prerequisites established or required by the ITAR are fulfilled prior to introducing ITAR-controlled data into the ITAR Covered Services.
(ii) Customer acknowledges that the ITAR Covered Services ordered by Customer under this Agreement enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which Customer’s administrator(s) will manage and configure the ITAR Covered Services.

(i) Customer is responsible for reviewing Online Services documentation, configuring the ITAR Covered Services, and adopting and implementing such policies and practices for Customer’s End Users’ use of ITAR Covered Services, together with any add-ons, as Customer determines are appropriate to comply with the ITAR or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

(ii) Customer acknowledges that only ITAR Covered Services will be delivered subject to the terms of this Section. Processing and storage of ITAR-controlled data in other services, including without limitation add-ons, is not supported. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization, if any, or data provided by or on Customer’s behalf to Microsoft’s billing or commerce systems in connection with purchasing or ordering ITAR Covered Services, if any, is not subject to the provisions of this Section. Customer is solely responsible for ensuring that ITAR-controlled data is not included in support information or support case artifacts.

b. Special Terms.

(i) ITAR Covered Services. The ITAR Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of Customer’s preparation to use the ITAR Covered Services for the storage, processing, or transmission of ITAR-controlled data, Customer should review applicable services documentation. Customer’s compliance with the ITAR will be dependent, in part, on Customer’s configuration of the services and adoption and implementation of policies and practices for Customer’s End Users’ use of ITAR Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with the ITAR.

a. Personnel. Microsoft personnel and contractors authorized by Microsoft to access Customer Data (that may include ITAR-controlled data) in the ITAR Covered Services, will be limited to U.S. persons, as that term is defined in the ITAR. Customer may also authorize Microsoft personnel and contractors to access its Customer Data. Customer is solely responsible for ensuring any such authorization is permissible under the ITAR.

b. Use of Subcontractors. As set forth in the OST, Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the ITAR Covered Services will be permitted to obtain Customer Data (that may include ITAR-controlled data) only to deliver the ITAR Covered Services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the ITAR Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with ITAR Covered Services, they are obligated to follow Microsoft’s policies, including without limitation the geographic restrictions and controls selected by you in the configuration of the ITAR Covered Services. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations.

c. Notification. The Security Incident handling process defined in the OST will apply to the ITAR Covered Services. In addition, the parties agree to the following:
9. **IRS 1075 Covered Services.** If the Customer is subject to IRS 1075 with respect to its use of the Online Services, then this section applies but only to the IRS 1075 Covered Services, defined below, Customer buys under the Subscription.

a. Customer Prerequisites

(i) Customer is responsible to ensure that the prerequisites established or required by IRS Publication 1075 are fulfilled prior to introducing FTI into the IRS 1075 Covered Services.

(ii) Customer acknowledges that the IRS 1075 Covered Services ordered by Customer under the Subscription enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which your administrator(s) will manage and configure the IRS 1075 Covered Services.

(iii) Customer is responsible for reviewing Online Services documentation, configuring the services, and adopting and implementing such policies and practices for your End Users’ use of IRS 1075 Covered Services, together with any add-ons, as Customer determines are appropriate in order for Customer to comply with IRS Publication 1075 or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

(iv) Customer acknowledges that only IRS 1075 Covered Services will be delivered subject to the terms of this Section 9. No other services are supported by the terms of this Section 9. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization (“Support Data”), if any, or data provided by or on Customer’s behalf to Microsoft’s billing or commerce systems in connection with purchasing/ordering IRS 1075 Covered Services (“Billing Data”), if any, is not subject to the provisions of this Section 9. Customer is solely responsible for ensuring that FTI is not provided as Support Data or Billing.
b. IRS Publication 1075 Special Terms.

(i) IRS 1075 Covered Services. The IRS 1075 Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of your preparation to use the services for FTI, Customer should review applicable services documentation. Customer’s compliance with IRS Publication 1075 will be dependent, in part, on Customer’s configuration of the services and adoption and implementation of policies and practices for Customer’s End Users’ use of IRS 1075 Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with IRS Publication 1075.

(ii) Attachment 1 contains the Safeguarding Contract Language for Technology Services specified by IRS Publication 1075. Microsoft and Customer has agreed that certain requirements of the Safeguarding Contract Language and IRS Publication 1075 will be fulfilled as set forth in the remainder of this section 9.

(iii) Personnel Records and Training. Microsoft will maintain a list of screened personnel authorized to access Customer Data (that may include FTI) in the IRS 1075 Covered Services, which will be available to Customer or to the IRS upon written request. Customer will treat Microsoft personnel personally identifiable information (PII) as Microsoft trade secret or security-sensitive information exempt from public disclosure to the maximum extent permitted by applicable law, and, if required to provide such Microsoft personnel PII to the IRS, will require the IRS to treat such personnel PII the same.

(iv) Training Records. Microsoft will maintain security and disclosure awareness training records as required by IRS Publication 1075, which will be available to Customer upon written request.

(v) Confidentiality Statement. Microsoft will maintain a signed confidentiality statement, and will provide a copy for inspection upon request.

(vi) Cloud Computing Environment Requirements. The IRS 1075 Covered Services are provided in accordance with the FedRAMP System Security Plan for the applicable services. Microsoft’s compliance with controls required by IRS Publication 1075, including without limitation encryption and media sanitization controls, can be found in the applicable FedRAMP System Security Plan.

(viii) Use of Subcontractors. Notwithstanding anything to the contrary in Attachment 1, as set forth in the OST, Microsoft may use subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the IRS 1075 Covered Services will be permitted to obtain Customer Data (that may include FTI) only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the IRS 1075 Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with IRS 1075 Covered Services, they are obligated to follow Microsoft’s policies. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations. Subject to the preceding, Microsoft may employ subcontractor personnel in the capacity of augmenting existing staff, and understands IRS Publication 1075 reference to employees to include employees and subcontractors acting in the manner specified herein. It is the responsibility of the Customer to gain approval of the IRS for the use of all subcontractors.

Microsoft maintains a list of subcontractor companies who may potentially provide personnel authorized to access Customer Data in the Online Services, published for Azure branded services at [http://azure.microsoft.com/en-us/support/trust-center/](http://azure.microsoft.com/en-us/support/trust-center/), or successor locations identified by Microsoft. Microsoft will update these websites at least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the website and provide Customer with a mechanism to obtain notice of that update.

(ix) Security Incident Notification. The Security Incident handling process defined in the OST will
apply to the IRS 1075 Covered Services. In addition, the parties agree to the following:

1. Customer acknowledges that effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Customer’s control. Accordingly, compliance with IRS Publication 1075 Incident Response requirements will be a joint obligation between Microsoft and Customer.

2. If, subsequent to notification from Microsoft of a Security Incident, Customer determines that FTI may have been subject to unauthorized inspection or disclosure, it is Customer responsibility to notify the appropriate Agent-in-Charge, TIGTA (Treasury Inspector General for Tax Administration) and/or the IRS of a Security Incident, or to notify impacted individuals, if Customer determines this is required under IRS Publication 1075, other applicable law or regulation, or Customer internal policies.

   c. Customer Right to Inspect.

   (i) Audit by Customer. Customer will, (i) be provided quarterly access to information generated by Microsoft’s regular monitoring of security, privacy, and operational controls in place to afford you an ongoing view into the effectiveness of such controls, (ii) be provided a report mapping compliance of the IRS 1075 Covered Services with NIST 800-53 or successor controls, (iii) upon request, be afforded the opportunity to communicate with Microsoft’s subject matter experts for clarification of the reports identified above, and (iv) upon request, and at Customer’s expense, be permitted to communicate with Microsoft’s independent third party auditors involved in the preparation of audit reports. Customer will use this information above to satisfy with any inspection requirements under IRS Publication 1075 and agrees that the audit rights described in this section are in full satisfaction of any audit that may otherwise be requested by the Customer.

   (ii) Confidentiality of Audit Materials. Audit information provided by Microsoft to Customer will consist of highly confidential proprietary or trade secret information of Microsoft. Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret information subject to this agreement prior to providing such information to Customer, and Customer will ensure Microsoft’s audit information is afforded the highest level of confidentiality available under applicable law.

   (iii) This Section 9.c is in addition to compliance information available to Customer under the OST.

10. Criminal Justice Information Services (CJIS). If the Customer is subject to CJIS with respect to its use of the Online Services, then this section applies but only to the Government CJIS Covered Services, defined below, you buy under the Subscription.

   a. Customer Prerequisites

   (i) Microsoft’s representations as it relates to its CJIS Covered Services’ compliance with the FBI Criminal Justice Information Systems (“CJIS”) Security Addendum (Appendix H of FBI CJIS Policy) are subject to Customer’s incorporation of applicable state-specific CJIS Amendment terms and conditions into Customer’s order with the Contractor. They are also subject to Customer’s incorporation and flow down of such terms in Customer’s contracts with a Covered Entity.

   (ii) Please visit https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS for additional information about CJIS Covered States and CJIS Covered Services. Note that not all states are CJIS Covered States and that different CJIS Covered Services may apply in different CJIS Covered States. For more information about how to sign up for CJIS Covered Services through an Enterprise Agreement, please visit https://azure.microsoft.com/en-us/pricing/enterprise-agreement/. For purposes of this section, if Customer is not in a CJIS Covered State, then Microsoft is unable to provide CJIS-related representations at this time, and no CJIS Amendment will apply.

   (iii) Customer can access the terms and conditions of Microsoft’s adherence to the FBI CJIS Policy by contacting the CSA in a CJIS Covered State. The Security Addendum for
Private Contractors (Cloud Providers) referenced in the FBI CJIS Policy and CSA-provided terms and conditions is incorporated herein by reference, and you acknowledge that Microsoft’s support for CJJ will be in accordance with those terms agreed to and/or signed by the applicable state CSA. Customer also acknowledges that it is Customer’s responsibility to contact the applicable state CSA for this and any additional information. Customer is required to, and acknowledge it will, work directly with the applicable state CSA for any CJIS-related documentation and audit requirements.

(iv) Customer is responsible to ensure that the CJIS Security Addendum has been signed by the CSA, that the CSA has approved Customer’s use of the Covered Services to store or process CJJ, and that any other prerequisites established or required by either the FBI, state CSA, or Customer is fulfilled prior to introducing CJJ into the Covered Services.

(v) Customer acknowledges that it will keep records of any Covered Entity to which it provides CJIS State Agreements or other CJIS-related documentation Customer obtains from the state CSA and shall make such records available to Microsoft promptly upon request.

b. If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

11. **Government Community requirements.** Customer certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacities as a member of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited. Customer acknowledges that only Community members may use Government Community Cloud Services.

a. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Agreement.

b. Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

c. Any Customer that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

d. Use Rights for Government Community Cloud Services. For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

1. Government Community Cloud Services will be offered only within the United States.

2. Additional European Terms, as set forth in the Use Rights, will not apply.

3. References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

e. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.

f. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.

g. Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the
same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.

h. **Operational and Ordering Consideration for GCC High:**

(i) Customer (a) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the order and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the order), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Customer is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

(ii) Customer acknowledges that (a) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (a) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 GCC High, may differ from those components available in similar suites available in other forms of Office 365 Services.

(iii) The parties acknowledge that, as of the date this Agreement was executed, the Office 365 ProPlus "click-to-run" (C2R) feature is not yet available in Office 365 GCC High, notwithstanding anything to the contrary in the Use Rights. Accordingly, the following terms and conditions shall apply:

Until C2R functionality is made available, Customer may install up to two (2) local copies of Office Professional Plus for each User to whom E3 licenses are assigned, for the sole use of those assigned Users on Qualified Devices in Customer's Enterprise.

Once C2R functionality is made available (the "C2R release date," to be announced in the Office 365 Service Descriptions), Customer must cease installing additional local copies of Office Professional Plus, and shall as soon as practicable (but in no event later than 12 months following the C2R release date) replace each local copy that was installed pursuant to the preceding paragraph with a C2R-installed copy.

12. **Miscellaneous.**

a. **Notices.** You must send notices by mail, return receipt requested, to the address below.

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<td>Microsoft Corporation</td>
<td>Microsoft Corporation Legal and Corporate Affairs</td>
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<td>Via Facsimile: (425) 936-7329</td>
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Customer agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account
administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not Customer actually receives the email.

b. **Assignment.** Neither Customer, Contractor nor Microsoft may assign this agreement either in whole or in part without the other party’s prior written consent. Any prohibited assignment is void.

C. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

e. **No agency.** This agreement does not create an agency, partnership, or joint venture.

f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.

g. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

h. **Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.

i. **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

j. **Entire agreement.** In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.

k. **Survival.** All provisions survive termination of this agreement except that requiring performance only during the term of the agreement.

l. **U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

(v) **Force majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

(vi) **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity’s behalf.

(vii) **Additional Terms Applicable when the Customer is a U.S. Federal Agency.**

(i) No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or authorized officer of Customer purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

(ii) If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of your license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than Federal law; and/or (4) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or
incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.


Any reference in this agreement to “day” will be a calendar day.

“Acceptable Use Policy” is set forth in the Online Services Terms.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at http://azure.microsoft.com/en-us/regions/#services, which are Government Community Cloud Services.

“CJI” means Criminal Justice Information, as defined in FBI CJIS Policy.

“CJIS Covered State” means a state, as shown at https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS or another site Microsoft may provide, with which Microsoft and the applicable state have entered into a CJIS State Agreement.

“CJIS Covered Service” means, for any state-specific CJIS Amendment, the Microsoft Online Services that are listed as such in that amendment, and for which Microsoft’s CJIS representations apply.

“CJIS State Agreement” means an agreement between Microsoft and a Covered State’s CSA (or another entity to which the CSA has delegated its duties) containing terms and conditions under which the Covered State and Microsoft will comply with the applicable requirements of the CJIS Policy. Each CJIS State Agreement is consistent with the applicable state-specific CJIS Amendment, and includes Microsoft CJIS Security Addendum Certifications. For clarity, a CJIS State Agreement may be titled “CJIS Information Agreement” or “CJIS Management Agreement.”

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Customer Agreement” means the binding agreement between the Contractor and Customer under which Customer orders Products from the Contractor and the Contractor binds Customer to the terms of the this agreement.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx or a successor site Microsoft later identifies.

“Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 2.

“Covered Entity” means any State/Local Entity in a Covered State with which you maintain a contractual relationship whose use of CJIS Covered Services is subject to CJIS Policy.

“CSA” means, for each CJIS Covered State, that state’s CJIS Systems Agency, as defined in FBI CJIS Policy. “Customer Data” is defined in the Online Services Terms.
“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services. With respect to ITAR Covered Services, End User means an individual that accesses the ITAR Covered Services. With respect to IRS 1075 Covered Services, End User means an individual that accesses the IRS 1075 Covered Services. “Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“FTI” is defined as in IRS Publication 1075.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.


“IRS Publication 1075” means the Internal Revenue Services (IRS) Publication 1075 effective January 1, 2014, including updates (if any) released by the IRS during the term of the Enrollment.

“ITAR” means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

“ITAR-controlled data” means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.

“ITAR Covered Services” means, solely with respect to this Amendment, the (i) Office 365 GCC High services; and (ii) Azure Government services, listed as being in the scope for the ITAR at https://www.microsoft.com/en-us/TrustCenter/Compliance/itarsite or its successor site.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at https://www.microsoft.com/en-us/TrustCenter/Compliance/ or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

“Licensing Site” means http://www.microsoft.com/licensing/contracts or a successor site.

“Non-Microsoft Product” is defined in the Online Services Terms.


“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions.
“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions.

“Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Government Community Cloud Services, Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services and attached hereto. The Online Services Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Online Services Terms applies to Enrolled Affiliate’s order.

“Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is attached hereto. The Product Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Product Terms applies to Enrolled Affiliate’s order.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site. The SLA in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the SLA applies to Enrolled Affiliate’s order.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’s jurisdiction and geographic boundaries.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

“Subscription” means an enrollment for Online Services for a defined Term as established by your Reseller. “Technical Data” has the meaning provided in 22 C.F.R. § 120.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.