APPENDIX 39

SOFTWARE AS A SERVICE (SAAS) AGREEMENT TEMPLATE

(BEGINS ON NEXT PAGE)
THE STATE OF MONTANA

SOFTWARE AS A SERVICE (SaaS) AGREEMENT

BETWEEN

("Provider")

AND

THE STATE OF MONTANA
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SaaS AGREEMENT

This Software as a Service (SaaS) Agreement ("Agreement"), dated ________ ("Effective Date"), by and between [_________], ("Provider"), whose address is [_________] and the State of Montana, [_________] ("the State") whose address is [_________]. The State and Provider are referred to herein individually as a “Party” and collectively as the “Parties.”

The Parties agree as follows:

1. DEFINITIONS

1.1 “Acceptance Date” means the first Business Day after the day the State accepts the Software, or it is deemed accepted under Section 4.2 entitled “Acceptance Period.”

1.2 “Acceptance Period” means the period commencing on the Installation Date and continuing for 60 days, as such period may be extended under Section 4.2 entitled “Acceptance Period.”

1.3 “Affiliate” means public procurement units, as defined in section 18-4-401, MCA, that have the option of cooperatively purchasing with the State of Montana.

1.4 “Application” means the products and/or Services identified on Exhibit A hereto, to which Provider shall provide the State access.

1.5 “Business Day” means Monday through Friday less holidays observed by the State.

1.6 “Confidential Information” means, subject to Montana’s Open Records Law, all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. With respect to the State, Confidential Information shall also include any and all information transmitted to or stored by Provider in connection with performance of its obligations under this Agreement, including, but not limited to, personally identifiable information (“PII”) of residents, employees or people included within the State’s Data, including name, address, phone number, e-mail address, date of birth, social security number, patient records, credit card information, driver’s license number, account numbers, PINs and/or passwords, and any other information that could reasonably identify a person.

1.7 “Deliverable” means a requirement that must be completed or provided as part of a project.

1.8 “Derivative Work” means a work that is based upon one or more pre-existing works or that incorporates a pre-existing work, such as a compilation, revision, modification, translation, abridgement, condensation, expansion or any other form in which such pre-existing works may be recast, transformed or adapted.

1.9 “Documentation” means the user manuals and operator instructions related to the Application that are furnished by Provider to the State in any format, including paper and electronic, in conjunction with the Project.

1.10 “Initial Term” means the first period of this agreement (insert dates).
1.11 “Intellectual Property Rights” (IP Rights) means any and all rights that may exist under patent law, copyright law, publicity rights law, moral rights law, trade secret law, trademark law, unfair competition law or other similar protections, whether or not such rights are registered or perfected.

1.12 “Marks” means, with respect to a Party, all trademarks, trade names, service marks and domain names, and any visual representations thereof, including logos, designs, symbols, word marks, images, colors and color combinations, trade dress and characters, and any other publicity rights or indicia of ownership owned or used by such Party.

1.13 “Object Code” means the machine-language output of a compiler that is ready for execution on a particular computer.

1.14 “Project” is a temporary endeavor undertaken to create a unique product, service, or result.

1.15 “Schedule” means the document representing the initial and subsequent licensing and pricing of the Application, Subscription term, number of allowed users, and access to the Application.

1.16 “Services” means the professional, technical, project management or other services as defined in a Schedule.

1.17 “Source Code” means the human-readable code from which a computer can compile or assemble the Object Code of a computer program, together with a description of the procedure for generating the Object Code.

1.18 “Subscription” An agreement to receive or be given access to electronic Services and Applications, over the Internet.

1.19 “Subscription Software” or “Software” means the compiled, machine-readable, and/or executable version of the Software and related Documentation now in use by Provider and as may be improved or modified by Provider in the future, as more fully described on Exhibit A.

1.20 “Term” means the then current period of the Agreement.

1.21 “The State” means any purchaser of Applications and/or Services from Provider.

1.22 “The State’s Data” means any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application or otherwise supplied to Provider by the State and any Software and its related Documentation, from whatever source, supplied by the State to Provider in connection with this Agreement. With the exception of any applicable third-party rights, the State exclusively owns all right, title and interest in the State’s Data, including all Intellectual Property (IP) Rights. Nothing in this Agreement shall be construed as conveying any rights or interest in the State’s Data to Provider.

1.23 “Virus” means any undocumented malicious data, code, program, or other internal component (e.g., computer worm, computer time bomb or similar component), which could damage, destroy, alter or disrupt any computer program, firmware or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other
information accessed through or processed by the Application in any manner.

1.24 “Warranty Period” means one year (unless otherwise agreed to in writing) commencing upon the Acceptance Date of the applicable Software component.

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Effective Date. This Agreement takes effect on the Effective Date and remains in effect until termination or expiration of the current Schedule.

2.2 Renewal. This Agreement may be renewed, upon mutual agreement between the parties and according to the terms and conditions of the existing Agreement, in one-year intervals, or any interval that is advantageous to the State. This Agreement, including any renewals, may not exceed a total of ten years, at the State’s option.

2.3 Expiration. Provider must notify the State 90 days in advance of Agreement or Schedule expiration date.

3. APPLICATION SUBSCRIPTION

3.1 Subscription Grant and Fee. Provider hereby grants the State and its Affiliates a non-transferable, non-exclusive, worldwide Subscription to access and use the Application during the Term by any method. The Subscription fee for the rights granted in this Section 3 during the Initial Term is set forth in Exhibit A and applies regardless of access mode.

3.2 Derivative Work. The State may create and use Derivative Works from the Software and Deliverables for training and presentation needs.

3.3 Non-production Use. The State may access and use the Application for non-production purposes such as disaster recovery and test environments.

4. STATE’S RESPONSIBILITIES

4.1 State’s Data. Unless otherwise agreed, the State is responsible for creating and modifying the State’s Data and keeping the State’s Data input into the Application current and accurate.

4.2 Acceptance Period. The State has the Acceptance Period to test the Application and Services in a live production environment to ensure that they conform to the specifications set forth in the Agreement, its Exhibits, and the applicable Documentation. Upon acceptance, the State shall pay Provider all undisputed charges within thirty (30) days of receipt of a correct invoice. If, at the State’s sole discretion, the Application and/or Services do not meet these acceptance criteria and Provider, within 60 days of written notice from the State, does not correct all deficiencies identified by the State at no additional cost, the State may terminate this Agreement. Provider shall promptly refund to the State all sums paid by the State under this Agreement. Such refund does not bar the State from pursuing other remedies available under the Agreement or law.

4.3 If a new version of the Application becomes available during the Acceptance Period, the new version is made available to the State at no additional cost.
4.4 No fees or charges may be assessed to the State during the Acceptance Period.

5. PROVIDER RESPONSIBILITIES

5.1 Security.

5.1.1 Provider shall provide a secure environment for all of the State’s Confidential Information and any hardware and Software (including servers, network and data components) to be provided or used by Provider as part of its performance under this Agreement. Provider represents that the security measures it takes in performance of its obligations under this Agreement are, and will at all times remain, at the highest of the following (collectively referred to as “Security Best Practices”): (i) Privacy & IT Security Best Practices (as defined by NIST 800-53, and the State Security Policies and procedures); (ii) the security requirements, obligations, specifications and event reporting procedures set forth in Exhibit B to this Agreement; and (iii) standard procedures for the provision of similar services and access to networks containing Confidential Information. Provider’s failure to comply with Security Best Practices in fulfilling its obligations under this Agreement constitutes a breach of this Agreement. Additionally, Provider shall contractually require any subcontractors or agents with access to the State’s Confidential Information to adhere to such Security Best Practices.

5.1.2 The State (or its designated representatives) may annually or more frequently as reasonably requested by the State, at the State’s expense, conduct an audit to verify that Provider is operating in accordance with Security Best Practices. Such audit may include a review of all aspects of Provider’s performance under this Agreement, including, but not limited to: (i) Software development practices and procedures; (ii) network, operating system, database and Application configuration controls; (iii) general controls and security practices and procedures; (iv) disaster recovery and back-up procedures; (v) change and problem management processes and procedures; (vi) invoice processing; (vii) service level compliance including compliance by Provider’s subcontractors and agents; (viii) network and system vulnerability and risk analysis; and (ix) resource consumption. Provider shall cooperate with the State in conducting any such audit, and shall allow the State reasonable access, during normal business hours and upon reasonable notice, to all pertinent records, Documentation, computer systems, data, personnel and processing areas as the State deems necessary to accurately and effectively complete such audit. The State shall take reasonable steps to ensure that such audit will not materially impact Provider’s business or operations. Provider shall promptly correct any deviations from Security Best Practices that are identified in any security audit.

5.1.3 Contractor shall ensure systems delivered under this Agreement are adequately secure. For purposes of this Agreement, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the State's use of its data and information technology or permit unauthorized access to the State's data or information technology. The State of Montana has established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, Contractor
shall provide reasonable proof, through independent audit reports, that the system specified under this Agreement meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the State's data and information technology. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

5.1.4 Prohibited Activities and Spoofing. Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the State’s network or interfere or attempt to interfere with the State’s systems, networks, authentication measures, servers or equipment, or with the use of or access to the State’s network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the State’s network or other systems; and (iii) attempting to portray itself as the State or an affiliate of the State or otherwise attempting to gain access, without authorization, via the State’s network or systems to any account or information technology resource not belonging to Licensor or its officers, employees, agents, subcontractors, and affiliated users (“Spoofing”). Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the mt.gov domain or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the State’s domain.

5.2 Resources and Support. Provider shall, throughout the Term, make available such resources, including Provider personnel, as are reasonably required to: (a) train designated employee(s) of the State in the use of the Application; (b) support the obligations of the State provided in Section 4; (c) develop modifications to the Application as agreed to by the Parties in any Exhibit hereto; and (d) otherwise support the Application as provided under this Agreement and any Attachments or Exhibits hereto. Provider shall also make available to the State technical support for the Application within 1 Business Day of receiving inquiries by electronic mail or telephone and respond to problems or issues in accordance with the service levels and warranties set forth in this Agreement and exhibits. In addition, Provider shall provide the State with the name and contact information for key programmers who are familiar with the Source Code for the Application and shall make such programmers available for transition purposes if the State terminates this Agreement for cause.

5.3 Additional Services. At no additional cost to the State, Provider shall provide access to additional features and functionalities of the Application as Provider allows to other customers who require functionality similar to the Application provided to the State. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in written format or distributed online via the Provider’s web site. Except as set forth in Exhibit A, nothing in the Agreement or this Section 5.3 obliges Provider to undertake any modifications to the Application, and all such modifications are at Provider’s sole discretion whether suggested by the State or another party.
5.4 **Compliance with Laws.** The Provider shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Provider is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by the Provider subjects subcontractors to the same provisions. In accordance with section 49-3-207, MCA, and Executive Order No. 04-2016, the Provider agrees that the hiring of persons to perform this Agreement will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Agreement.

5.5 **Provider’s Incorporation.** Provider represents and warrants to the State that (a) Provider is a corporation, duly organized, validly existing and in good standing under the laws of the State of _______ and has all rights and power necessary to execute, deliver and perform its obligations under this Agreement, including the right to grant the Subscriptions and provide the Services granted and provided under this Agreement; (b) the execution, delivery and performance of this Agreement by Provider (i) has been approved by any necessary company action and (ii) is not contrary to, or in conflict with, the formation and governance documents of Provider, any agreement to which Provider is bound or any applicable law; (c) Provider’s employees assigned to provide the Application have the knowledge, expertise and training necessary for Provider to effectively perform its duties and responsibilities hereunder; and (d) Provider is the sole owner of and has all the necessary IP Rights in the Application to grant the Subscription under this Agreement and that the Applications and Services delivered or to be delivered under this Agreement do not infringe upon, any IP Right of any person or entity and that there are no such claims of infringement as of the date hereof.

5.6 **Functional Warranty.** Provider warrants that the Application and Services, including any modifications that are made by Provider or under Provider’s instructions do not contain any material defects, and will conform in all material respects to the specifications, functions, descriptions, standards and criteria set forth in the Agreement, its Exhibits, and the Documentation, which are all incorporated herein by reference. Provider further warrants that all post-Acceptance updates, alterations, or modifications to the Application and Services will not materially diminish the features or functionality of the Application and Services. Provider shall promptly correct any errors identified by the State in the Application and in any modification to the Application at no cost to the State. If, Provider is unable to correct such errors within 30 days following notification by the State, then Provider shall at the State’s request accept return of the Application and return all money paid for the Application and maintenance. The State may also pursue any other remedies available to it under this Agreement or by law or equity.

5.7 **Viruses.** Provider warrants that it has used commercially reasonable efforts to ensure against introduction of any Virus into the State’s systems. Provider shall immediately advise the State, in writing, upon reasonable suspicion or actual knowledge that the Application may contain a Virus. If a Virus is found to have been introduced into the State’s
systems by the Application within 30 days after the Effective Date of this Agreement, Provider shall repair or replace the Application within 10 Business Days thereafter. If Provider cannot accomplish the foregoing within such time, then the State shall discontinue use of the Application, and Provider shall refund all money paid for the Application and maintenance under the applicable Exhibit. Provider shall use all reasonable commercial efforts, at no additional charge, to assist the State in reducing the effects of the Virus and, if the Virus causes a loss of operational efficiency or loss of data, to assist the State to the same extent to mitigate and restore such losses. In addition, Provider shall indemnify, defend and hold the State harmless from any claims, suits, damages, liabilities, losses, and attorney fees resulting from any such Viruses. The limitation of liability described in Section 13 does not apply to this indemnification obligation.

5.8 **Service Levels.** The service levels are set forth in Exhibit C (Service Level Agreement) attached hereto.

5.9 **Technology Access for Blind or Visually Impaired.** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

6. **RESTRICTIONS**

6.1 **General Use Restrictions.** The State shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without Provider’s prior written permission; provided, however, the State may reproduce and distribute any Application output generated from the State’s Data.

6.2 **Reverse Engineering.** Except as provided or allowed by law, the State shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive Source Code or other trade secrets from any of the Software comprising or in any way making up a part of the Application.

7. **ANNUAL SUBSCRIPTION REVIEW**

At the first and each subsequent year, the State shall order Subscriptions based on then current User count.

8. **TRANSITION ASSISTANCE/SUBSCRIPTION CONVERSION**

8.1 **Transition Assistance.** The Provider shall provide transition assistance to the State when requested. Upon termination of this Agreement for any reason, including but not limited to termination for cause, the Provider shall assist the State in the orderly transition to a new Provider. The State shall have access to the Provider’s system and the Provider’s support of that system for up to one (1) year following termination, for which Services the State shall pay the Provider at its then-current hourly rate(s).

The Provider grants the State a perpetual right to use the Application and Object Code if
any one of the following occurs: (a) Provider’s insolvency, bankruptcy, or involvement in an involuntary proceeding for protection of its creditors; (b) Provider materially breaches this Agreement and the State terminates the Agreement; (c) Provider fails to continue development of the Software contained in the Application; (d) Provider fails to provide the State with the most recent version of the Software contained in the Application; or (e) any other circumstance whereby Provider can no longer satisfy its obligation to provide Services to the State under this Agreement.

8.2 Subscription Conversion. Should the State elect to move to an on-premise solution, the Provider shall issue the State credits for the conversion or transfer of non-perpetual Subscriptions hosted by Provider to perpetual Subscriptions now managed on premise by the State. Provider shall allow the State to buy out non-perpetual Subscriptions hosted on Provider’s site if State decides to move the Application on-premise at a later date.

9. CONSIDERATION/PAYMENT

9.1 Payment Schedule. In consideration for the DAM system to be provided, the State shall pay Contractor according to the following Schedule:

Payment will be made upon implementation and State approval of milestone Deliverables.

The total firm fixed price includes; Cost of Services, cost of Software and all associated Subscription fees, cost of implementation, training costs and one year of warranty. The Contractor will invoice the State for portions of the cost of the total Project price upon State acceptance of each milestone. The holdback will be tendered on a monthly basis during the 12-month Warranty Period (see Section 10.2 for holdback).

9.2 Withholding of Payment. The State may withhold disputed payments to the Provider under this Agreement. The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the Agreement. With respect to payments subject to milestone acceptance criteria, the State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Provider is not relieved of its performance obligation if such payment(s) is withheld.

9.3 Payment Terms. Unless otherwise noted in the solicitation document, the State has 30 days to pay invoices, as allowed by 17-8-242, MCA. Provider shall provide banking information at the time of Agreement execution in order to facilitate the State’s electronic funds transfer payments.

9.4 Cost Increase by Mutual Agreement. After the Agreement’s Initial Term and if the State agrees to a renewal, the Parties may agree upon a cost increase. The State is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Provider's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

9.5 Purchasing Card. The State of Montana has a Purchasing Card Program in place that gives agencies the ability to charge purchases made from this Agreements. The State of Montana prefers this method of payment.
9.6 **Reference to Agreement.** The Agreement number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Agreement. If the number is not provided, the State is not obligated to pay the invoice.

9.7 **Tax Exemption.** State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.l. 111-148, 124 Stat. 119].

9.8 **Personal Property Tax.** All personal property taxes will be paid by the Provider.

10. **AGREEMENT PERFORMANCE ASSURANCE**

10.1 **Milestone Payments.** The State shall pay Provider based on completion and acceptance of each milestone defined below.

10.2 **Payment Holdbacks.** 20% will be withheld from each milestone payment for Project implementation. The total amount withheld will be paid to Provider at the completion and acceptance of the Warranty Period.

<table>
<thead>
<tr>
<th>Implementation Phase</th>
<th>Hold Back</th>
<th>Payment % of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement Signing</td>
<td>0%</td>
<td>10%</td>
</tr>
<tr>
<td>Milestone 1: Planning/Analysis/Requirements</td>
<td>20%</td>
<td>10%</td>
</tr>
<tr>
<td>Milestone 2: Configure/Build/Develop</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Milestone 3: Launch Support/Cutover</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Milestone 4: DAM in Production for 60 days</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Milestone 5: Final Acceptance</td>
<td>20%</td>
<td>20%</td>
</tr>
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<td></td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

11. **PROPRIETARY RIGHTS**

11.1 **Marks and Copyrights.** The State shall not permit any of its employees to remove, alter, deface, obscure or otherwise modify any of Provider’s Marks that are displayed on the Application, whether such Provider Marks are displayed or otherwise rendered by Software or on printed media. In addition, the State shall not adopt or otherwise utilize any Marks containing confusingly similar names, designs or other indicia to Provider’s Marks nor dilute Provider’s Marks in any manner. Provider shall not use any of the State’s Marks without the State’s prior written permission, and shall not adopt or otherwise use any Marks containing confusingly similar names, designs or other indicia to the State’s Marks nor dilute the State’s Marks in any manner.

11.2 **Documentation.** The State may retain any Documentation or other items necessary or helpful to using the databases, data or other products produced by the Application and Services that State has paid for and has the right to use.
12. CONFIDENTIAL INFORMATION

12.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party’s Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

12.2 Mutual Confidentiality Obligations. Except as expressly provided otherwise in this Agreement, each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any Derivative Work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, the State shall not be required to return Software if the Subscription is paid for and the Subscription terms have not been breached by the State.

12.3 Confidentiality Exceptions. The provisions of Sections 11.1 and 11.2 do not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient Party by persons not bound by confidentiality obligations; (iv) is already in the recipient’s possession free of any confidentiality obligations with respect to the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Despite the foregoing, each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall, as early as reasonably possible under the circumstances, give written notice to the other Party and assist the other Party, at its expense, in establishing its rights under this Agreement, including to make such court filings as it may be required to do.

13. INFRINGEMENT DEFENSE AND INDEMNITY PROTECTION

13.1 Third-Party Claim. If any third party asserts a claim against the State that the Application furnished under this Agreement infringe upon or violate the third party’s IP Rights, the State shall promptly notify the Provider. The Provider shall defend such claim, in the State’s name or its own name, as appropriate, but at the Provider’s expense. The Provider shall indemnify the State against all costs, damages, losses, liabilities, and attorney's fees arising from such claim. This defense and indemnification obligation is conditioned on the following:

13.1.1 The State shall promptly notify the Provider of the claim in writing; and

13.1.2 The State will allow the Provider to control, and will cooperate with the Provider
in the defense and any related settlement negotiations, provided that:

13.1.2.1 The Provider shall permit the State to participate in the defense and settlement of any such claim, at the State's own expense, with counsel of its choosing; and

13.1.2.2 The Provider shall not enter into or agree to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the State, its elected and appointed officials, agents or employees without the State's prior written consent.

13.2 Application Subject of Claim. If any Application furnished is likely to or does become the subject of a claim of infringement of a third party’s IP Rights, then the Provider may, at its option, procure for the State the right to continue using the alleged infringing Application, or modify the Application so that it becomes non-infringing or replace it with one that is at least functionally equivalent. If none of the above options can be accomplished, or if the use of such Application by the State shall be prevented by injunction, the State shall return the Application to the Provider on written request. The Provider shall then give the State a credit equal to the amount paid to the Provider for the creation of the Application. The State is not precluded from seeking other remedies available to it hereunder, including Section 15, and in equity or law for any damages it may sustain due to its inability to continue using such Application. The limitation of liability under Section 14 does not apply to Provider’s obligations under this Section 13 and the State’s right to seek additional remedies arising from Provider’s ‘infringement of a third party’s IP Rights.

14. LIMITATION OF LIABILITY

The Provider's liability for contract damages is limited to direct damages. The Provider shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or arising from any Provider indemnification under this Agreement, are not subject to a cap on the amount of damages.

15. AGREEMENT TERMINATION FOR REASONS OTHER THAN DEFAULT

15.1 Noncompliance with Department of Administration Requirements. The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, the State will pay for Applications and Services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Agreement must be mutually agreed to by the parties.

15.2 Reduction of Funding. The State must by law terminate this Agreement if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Agreement in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the State budgeting process to support continued performance of this Agreement (whether at an initial Agreement payment level or any Agreement increases to that initial level) in subsequent fiscal periods, the State shall terminate this Agreement as required by law. The
State shall provide Provider the date the State's termination shall take effect. The State shall not be liable to Provider for any payment that would have been payable had the Agreement not been terminated under this provision. As stated above, the State shall be liable to Provider only for the payment, or prorated portion of that payment, owed to Provider up to the date the State's termination takes effect. This is Provider's sole remedy. The State shall not be liable to Provider for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

15.3 **Termination for Convenience.** The State, by providing at least thirty (30) days prior written notice to the Provider, may terminate for convenience this Agreement and any Schedules. If this Agreement is terminated for the convenience of the State, the State shall pay for all accepted work or Services performed and accepted Deliverables completed in conformance with this Agreement up to the date of termination. This is the Provider’s sole remedy.

16 **SURVIVAL**

The rights and obligations of the Parties which, by their nature must survive termination or expiration of this Agreement in order to achieve its fundamental purposes, include without limitation, the provisions of the following sections: the State Representations and Warranties Section, Provider Representations and Warranties, Confidential Information, Disclaimer of Warranties, Indemnification, Limitation of Liability, Escrow, Miscellaneous) and this paragraph (Survival).

17. **EVENT OF BREACH – REMEDIES**

17.1 **Actions in Event of Breach.** Upon the occurrence of any material breach of this Agreement, either party may:

17.1.1 Give the breaching party a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater specification of time, thirty (30) days from the date of the notice; and if the event of breach is not timely remedied, terminate this Agreement upon giving the breaching party notice of termination and pursue any of its remedies at law or in equity or both; or

17.1.2 Treat this Agreement as materially breached and pursue any of its remedies at law or in equity, or both.

18. **CONTINUATION**

In the event of a dispute the Provider shall continue Services uninterrupted for a period of at least ninety (90) days.

19. **WAIVER OF BREACH**

Any term or condition of this Agreement may be waived at any time by the Party entitled to the benefit of that term or condition. However, no such waiver is effective unless done in writing executed by or on behalf of the Party waiving such term or condition. No waiver by a Party of any Agreement term or condition, in one or more instances, may be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.
20. ESCROW

20.1 Source Code. When requested by the State, Provider shall place the Application's Source Code and its Documentation with an escrow agent, acceptable to both parties, in accordance with the terms and conditions of an escrow agreement, the exact content of which shall be agreed upon by the Parties. Provider shall pay all escrow agent fees.

20.2 Source Code Escrow Agreement. The Escrow Agreement shall provide that the escrow agent shall release the Source Code Escrow to the State in the event of: (a) Provider's insolvency, bankruptcy, or involvement in an involuntary proceeding for protection of its creditors, (b) Provider materially breaches this Agreement; (c) Provider fails to continue development of the Software contained in the Application; (d) Provider fails to provide the State with the most recent version of the Software contained in the Application; or (e) any other circumstance whereby Provider can no longer satisfy its obligation to provide Services to the State under this Agreement, a through e above are referred to individually as a “Release Condition” or collectively as “Release Conditions”.

20.3 Release. Upon occurrence of a Release Condition, the State shall be deemed to have, automatically, a nonexclusive, fully paid, non-terminable, royalty-free, world-wide Subscription to use, modify, copy, produce Derivative Works from, display, disclose to persons who have entered into a written agreement containing substantially the same confidentiality provisions as in this Agreement for the purpose of accessing and maintaining the Software contained in the Application for the State, and otherwise to utilize the Software and the Source Code and other materials necessary to maintain and improve the Software for use by the State and otherwise treat the Source Code as Object Code, subject always to the limitations in this Agreement as clarified by this section.

21. GENERAL PROVISIONS

21.1 Hold Harmless/Indemnification. Contractor agrees to protect, defend, and save State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontracts, except the sole negligence of State, under this Contract.

21.2 Required Insurance

21.2.1 General Requirements. Provider shall maintain for the duration of the Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Provider, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

21.2.2 Primary Insurance. Provider's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be
excess of Provider’s insurance and shall not contribute with it.

21.2.3 Specific Requirements for Commercial General Liability. Provider shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Provider or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of Provider, including the insured’s general supervision of Provider; products, and completed operations, and the premises owned, leased, occupied, or used.

21.2.4 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Provider, Provider shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

21.2.5 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best’s rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135. The certificate must name the State of Montana as certificate holder and Provider shall provide copy of additional insured endorsement required by Provider’s commercial general liability policy. Provider must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

21.3 Assignment. The Provider shall not assign, transfer or subcontract any portion of this Agreement without the State’s express written consent.

21.4 Access and Retention of Records. The Provider shall provide the State, Legislative Auditor, or their authorized agents access to any records required to be made available by 18-1-118 MCA, in order to determine Agreement compliance. The Provider shall create and retain records supporting this Agreement for a period of eight years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the State of Montana or a third party.

21.5 Customer Data Backup. Provider shall back up all State data nightly to a storage device at Provider’s production datacenter for data recovery purposes. Additionally, Provider shall back up all State data to a storage server at the State’s datacenter for disaster recovery purposes. Data shall be stored for seven (7) days at the production facility and at the disaster recovery facility for thirty (30) days.

21.6 Force Majeure. Neither Party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays,
State of Montana Procurement Manual

fires, floods, labor disturbances, riots, wars, terrorist acts or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party’s obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

21.7 Notices. All notices, reports, invoices and other communications required or permitted hereunder to be given to or made upon any Party hereto in writing, shall be addressed as provided below and shall be considered as properly given if (a) sent by an express courier delivery service which provides signed acknowledgments of receipt; or (b) deposited in the U.S. certified or registered first class mail, postage prepaid, return receipt requested. All notices shall be effective upon receipt. For the purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that either Party shall have the right to change its address for notice hereunder to any other location by giving not less than 5 days’ prior written notice to the other Party in the manner set forth above.

State:

Attn: __________________________
Phone: _________________________
Fax: ____________________________

Provider:

Attn: __________________________
Phone: _________________________
Fax: ____________________________

21.8 Choice of Law and Venue. This Agreement is governed by the laws of Montana. The parties agree that any litigation concerning this Agreement, related bid or proposal must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (18-1-401, MCA)

21.9 Severability. A declaration by any court, or any other binding legal source, that any provision this Agreement is illegal, and void shall not affect the legality and enforceability of any other provision of the Agreement, unless the provisions are mutually dependent.

21.10 Relationship of the Parties. Nothing in this Agreement is intended or shall be construed to create or establish any agency, partnership or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated in this Agreement. Provider has no authority to act as agent for, or to incur any obligations on behalf of or in the name of, the State or its Affiliates.
21.11 **Personnel Conduct.** Provider shall be solely responsible for the conduct of its employees and subcontractors working on-site at the State under the terms of this Agreement and shall ensure that such employees and subcontractors comply with the State's site safety, security, information security and personnel conduct rules and procedures, including drug screening, as well as applicable federal, state and local laws. The State reserves the right to require the immediate removal from the State’s premises of any employee, subcontractor or agent of Provider who the State believes has failed to so comply, or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

21.12 **Registration with the Secretary of State.** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

   If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at [http://sos.mt.gov](http://sos.mt.gov).

21.13 **Compliance with Dark Money Spending Disclosure Requirements.** Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a disclosure form to the contract liaison. Disclosure forms can be found at:


   All disclosures must be submitted to (insert agency contact information), for reporting on the State’s transparency website at [https://transparency.mt.gov/](https://transparency.mt.gov/). Failure to comply with these requirements may result in contract termination. Contractor agrees that such a failure is a material breach of this Contract.

22. **SCOPE, AMENDMENT, AND INTERPRETATION**

22.1 **Agreement.** This Agreement consists of (insert number) numbered pages, Exhibits A, B, and C, RFP # (insert #), as amended, and the Provider's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor, the order of precedence of document interpretation is as follows: 1) amendments to this contract, 2) this contract, including exhibits, 3) RFP # (insert #), as amended, and 4) the Contractor's RFP response, as amended.

22.2 **Entire Agreement.** These documents contain the entire agreement of the Parties. Any enlargement, alteration or modification requires a written amendment signed by both Parties.
23. EXECUTION

THE PARTIES HERETO have caused the Agreement to be executed by their duly authorized representatives as of the Effective Date. This Agreement is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

STATE OF MONTANA

BY: _____________________________ (Name/Title)

__________________________ (Signature)

DATE: _________________________________

Approved as to Legal Content:

___________________________________   __________________________
Legal Counsel            (Date)

Approved as to Form:

___________________________________   __________________________
Procurement Officer          (Date)
State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

___________________________________   __________________________
Chief Information Officer    (Date)
Department of Administration

(INSERT CONTRACTOR'S NAME)

(Insert Address)
(Insert City, State, Zip)
FEDERAL ID #

BY: _________________________________ (Name/Title)

_______________________________ (Signature)

DATE: _________________________________
# EXHIBIT A

## Subscription Agreement

### Order Form

<table>
<thead>
<tr>
<th>Provider Contact</th>
<th>State Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>Address</td>
<td>Title</td>
</tr>
<tr>
<td>City</td>
<td>Phone</td>
</tr>
<tr>
<td>State</td>
<td>Email</td>
</tr>
<tr>
<td>Zip</td>
<td></td>
</tr>
<tr>
<td>Website</td>
<td></td>
</tr>
</tbody>
</table>

**Accounts Payable Contact**

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
<th>PO #</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Reference Agreement Number</th>
<th>[Agreement #]</th>
</tr>
</thead>
</table>

## Subscription Term

<table>
<thead>
<tr>
<th>Anniversary Start Date</th>
<th>Term</th>
<th>Anniversary End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>36 Months</td>
<td></td>
</tr>
</tbody>
</table>

## Description of Services

### Subscription Services

<table>
<thead>
<tr>
<th>Number of Process Users</th>
<th>Price/Process User/Month</th>
<th>Term (Months)</th>
<th>Annual Subscription Fee</th>
<th>Total Subscription Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>36</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

- [For example:]
  - Incident Management
  - Problem Management
  - Change Management
  - Configuration Management
  - Release Management
  - Service Level Agreement
  - Service Catalog
  - Asset Portfolio Management
  - Asset Contract Management
  - Employee Self Service
  - Reporting /OLAP

### Subscription Services

<table>
<thead>
<tr>
<th>Number of Servers</th>
<th>Price/Server/Month</th>
<th>Term (Months)</th>
<th>Annual Fee</th>
<th>Total Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>36</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

- [For example]
  - Discovery Application Dependency Mapping

### Implementation and Deployment Services

<table>
<thead>
<tr>
<th>Estimated Hours</th>
<th>Rate/Hour</th>
<th>Total Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Est. Hours or N/A</td>
<td>Rate/Hour or Flat Fee</td>
<td></td>
</tr>
</tbody>
</table>

---

Appendix 39, page 18

Software as a Service (SaaS) Agreement Template
<table>
<thead>
<tr>
<th>Additional Services</th>
<th>Fees</th>
<th>Term</th>
<th>Total Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-Premise Deployment</td>
<td>One Time Charge</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>XXX</td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Escrow</td>
<td>Annual</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

### Invoice Schedule

<table>
<thead>
<tr>
<th>Service</th>
<th>Invoice Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementation Services Fees (50%)</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>First Year Subscription Fees</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Implementation Services Fees (50%)</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Second Year Subscription Fees</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Third Year Subscription Fees</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Payment Terms</td>
<td>Net 30 days</td>
<td></td>
</tr>
<tr>
<td>PO #</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Conditions and Notes

**Subscription Services:**
1. Price / Process User / Month not to increase more than eight percent (8%) at first renewal period (Anniversary End Date).
2. The State may add Process Users in packs of five (5). Additional Subscription Fees will be pro-rated to the Anniversary End date.
3. Unlimited Customer Support is included in the Annual Subscription Fee.
4. All System upgrades are to be performed by the Provider and are included in the Annual Subscription Fee.

**Hosting:**
1. A shared Application server for State’s instances.
2. A secure hosted infrastructure is included in the Annual Subscription Fee.

**Implementation Services:**
1. The State to provide Project management leadership for the implementation.
2. The State to provide specific business, functional design, and process requirements.
3. The State to lead training for internal staff (Provider to provide guidance).
4. The State will assign a system administrator that will make best efforts to learn how to configure the system (through administrative trainings).
5. The State shall reimburse Provider for all authorized, reasonable and verifiable travel expenses incurred during the performance of the Implementation Services. Provider agrees to keep commercially reasonable records of all expenses to support claims for reimbursement from The State. All fees and expenses shall be invoiced to The State within sixty (60) days of the date the fees and expenses were incurred. Terms are payable net thirty (30) days.
<table>
<thead>
<tr>
<th>State</th>
<th>Provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>Title</td>
<td>Title</td>
</tr>
</tbody>
</table>
EXHIBIT B

PRIVACY AND IT SECURITY

The following is not intended to be an all-inclusive list of security Services and obligations necessary to comply with Security Best Practices, but is intended to capture key elements of such a program. The State reserves the right to modify the obligations set forth in this Exhibit B or add new obligations, and any such modified or new security requirement, specification or event reporting procedures shall become effective 30 days after written notice thereof from the State.

1. Definitions.

“Security Policies” mean statements of basic principles for securing Provider information consistent with Security Best Practices and applicable laws and regulations. Typically, Security Policies are high level instructions to management on how the organization is to be run with respect to Security Best Practices.


“Security Technical Controls” mean any hardware, Software or administrative mechanisms necessary to enforce Security Best Practices in accordance with the terms of this Agreement as methods for addressing security risks to information technology systems and relevant physical locations, or implementing related policies. Security Technical Controls specify technologies, methodologies, implementation procedures, and other detailed factors or other processes to be used to implement Security Policy elements relevant to specific groups, individuals, or technologies.

2. Information Security Policy. Provider represents and warrants that it has established and during the Term it will at all times enforce:
   (b) A security incident management program;
   (c) A security awareness program;
   (d) Business continuity and recovery plans, including regular testing;
   (e) Rigorous change control procedures; and
   (f) Procedures to conduct periodic independent security risk evaluations to identify critical information assets, assess threats to such assets, determine potential vulnerabilities, and provide for timely remediation.

3. Physical Access. Provider represents and warrants that it has established and during the Term it will at all times enforce:
   (a) Physical protection mechanisms for all information assets and information technology to ensure such assets and technology are stored and protected in appropriate data centers;
   (b) Appropriate facility entry controls limiting physical access to systems that store or process data;
   (c) Processes to ensure access to facilities is monitored is and restricted on a “need to know” basis; and
   (d) Controls to physically secure all Confidential Information and to properly destroy such information when it is no longer needed.
4. **Logical Access.** Provider represents and warrants that it has established and during the Term it will at all times enforce:
   (a) Appropriate mechanisms for user authentication and authorization in accordance with a “need to know” policy;
   (b) Controls to enforce rigorous access restrictions for remote users, contractors and service providers;
   (c) Timely and accurate administration of user account and authentication management;
   (d) Processes to ensure assignment of unique IDs to each person with computer access;
   (e) Processes to ensure Provider-supplied defaults for passwords and security parameters are changed and appropriately managed ongoing;
   (f) Mechanisms to track all access to Confidential Information by unique ID;
   (g) Mechanisms to encrypt or hash all passwords; and
   (h) Processes to immediately revoke accesses of inactive accounts or terminated/transferred users.

5. **Security Architecture and Design.** Provider represents and warrants that it has established and during the Term it will at all times maintain:
   (a) A security architecture that reasonably assures delivery of Security Best Practices;
   (b) Documented and enforced technology configuration standards;
   (c) Processes to encrypt Confidential Information in transmission and storage;
   (d) Processes to ensure regular testing of security systems and processes;
   (e) A system of effective firewall(s) and intrusion detection technologies necessary to protect Confidential Information; and
   (f) Database and Application layer design processes that ensure web site Applications are designed to protect the information data that is collect, processed, and transmitted through such systems.

6. **System and Network Management.** Provider represents and warrants that it has established and during the Term it will at all times maintain:
   (a) Mechanisms to keep security patches current;
   (b) Processes to monitor, analyze, and respond to security alerts;
   (c) Appropriate network security design elements that provide for segregation of data;
   (d) Anti-Virus Software; and
   (e) Processes to regularly verify the integrity of installed Software.
EXHIBIT C

SERVICE LEVEL AGREEMENT

1. SERVICE AVAILABILITY

1.1 Service Level Definitions

The Provider components are generally available 24 hours a day seven days a week. Provider only ensures Provider availability and the associated service levels during the Standard Hours of Operation, defined as follows:

*Standard Hours of Operation means* 7:00 am – 5:00 pm Mountain Time, Monday – Friday less holidays observed by the State.

1.2 Provider Web Site (www.xxx___)

1.2.1 Provider guarantees 100% availability of their service to the State’s network environment.

1.2.2 For purposes of this Service Level Agreement (SLA), the uptime guarantee does not include the operating system used by the State.

1.2.3 In the event of a failure to meet the SLA, the duration of such period will be considered downtime and the State will accrue Service Credits based on the following metrics:

**SERVICE CREDITS**

a. The Service Credit percentage will apply to the monthly fee in which the downtime occurred and will not exceed the monthly fee. Provider will issue the State a credit (or check if credit occurs in the final service month), which will be applied to the invoice in the month following the applicable event.

b. Service Credits are to be provided within 30 days of the downtime.

---

**Monthly Cumulative Downtime (listed in minutes)**

<table>
<thead>
<tr>
<th>Service Credits (percentage of monthly fee)</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 30 less than 60</td>
</tr>
<tr>
<td>61 - 120</td>
</tr>
<tr>
<td>121 - 240</td>
</tr>
<tr>
<td>241 - 300</td>
</tr>
<tr>
<td>301 - 360</td>
</tr>
<tr>
<td>Greater than 360</td>
</tr>
</tbody>
</table>

c. Service credits are accumulated monthly with Monthly Cumulative Downtime being reset at the beginning of each calendar month.

d. Provider monitoring/ticketing systems shall be the information source of record for the accumulation of Monthly Cumulative Downtime as may be verified by the State at its option.
### 1.3 Problem Management Key Performance Indicators

Performance Qualification Report (PQR) is a problem, question, or request from the State to the Provider service center. Call ticket priority levels are noted in the table below. The State will review Provider performance using the below metrics and Provider’s monthly report on key performance indicators (“KPI”).

#### Service Level Table

<table>
<thead>
<tr>
<th>Key Performance Indicator</th>
<th>During Standard Support Hours</th>
<th>Outside Standard Support Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1 PQR acknowledgement</td>
<td>• Within 15 minutes from receipt of a call from the State</td>
<td>• Within 15 minutes from receipt of Licensee call</td>
</tr>
<tr>
<td>Priority 1 PQR resolution or workaround</td>
<td>• Resolve within 2 clock hours from receipt of PQR call</td>
<td>• Resolve within 2 clock hours from receipt of PQR call</td>
</tr>
<tr>
<td>Priority 1 PQR Root Cause Analysis</td>
<td>• Root cause analysis (RCA) provided within 5 Business Days after Level C PQR Resolution</td>
<td>• Root cause analysis provided within 5 Business Days after Category 1 PQR Resolution</td>
</tr>
<tr>
<td>Priority 2 PQR Acknowledgement</td>
<td>• within 30 minutes</td>
<td>• Within one hour</td>
</tr>
<tr>
<td>Priority 2 PQR Resolution or workaround</td>
<td>• Resolve within 6 clock hours</td>
<td>• Resolve within 1 Business Day</td>
</tr>
<tr>
<td>Priority 2 PQR Root Cause Analysis</td>
<td>• Root cause analysis provided within 5 Business Days after Category 1 PQR Resolution</td>
<td>• Root cause analysis provided within 5 Business Days after Category 1 PQR Resolution</td>
</tr>
<tr>
<td>Priority 3 PQR Acknowledgement</td>
<td>• within 30 minutes</td>
<td>• Within eight hours</td>
</tr>
<tr>
<td>Priority 3 PQR Resolution or workaround</td>
<td>• Resolve within 1 Business Day</td>
<td>• Resolve within 1 Business Day</td>
</tr>
<tr>
<td>Priority 4 PQR Acknowledgement</td>
<td>• Within eight hours</td>
<td>• Next Business Day</td>
</tr>
<tr>
<td>Level 4 PQR resolution or workaround</td>
<td>• Resolve within 5 Business Days, root cause noted in next monthly report if applicable.</td>
<td>• Resolve within 5 Business Days, root cause noted in next monthly report if applicable.</td>
</tr>
</tbody>
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- **Service Reports**
  - Service Reports will be delivered to the State by the 10th Business Day of each month +/- 2 Business Days; electronic delivery to the appropriate person(s) and standing monthly meeting presentation by the Service Manager to the appropriate person(s) shall be considered an acceptable delivery vehicle.
Provider will provide a monthly status in its written report to the State for the KPIs. Failure of Provider to substantially meet the KPIs for problem resolution may entitle the State to exercise rights of termination pursuant to the termination provisions in the Agreement. The Provider service manager shall meet with the State Project manager in any event that KPIs are not met and provide a plan to meet the KPIs for the future.