

Buyer: WKP

CONTRACT NUMBER:006559

Event # 005263

CONTRACT between the **COUNTY OF OAKLAND** and **CONTRACTOR**

Not To Exceed Amount: \$1.00		Effective Date: 1/1/2022	Expiration Date:12/31/2025
Contract Description:	Dell Server/VMware Lic--P		
Contractor Information:		Contract Administrator:	
ACCESS INTERACTIVE LLC 46635 Magellan Novi MI 48377 Vendor No: 14239			
Purchasing Office Information:		County Contract Administrator and Using Department:	
Wendy Kay Pucher OAKLAND COUNTY 2100 Pontiac Lake Rd., Bldg. 41W Waterford, MI 48328-0462 248-858-0511 purchasing@oakgov.com		Michael Timm Director Information Technology 1200 N Telegraph Rd 49 West Pontiac Mi 48341 timmmr@oakgov.com	

The Parties agree to the attached terms and conditions:

FOR THE CONTRACTOR:

SIGN: Bradley Cheatham
Bradley Cheatham (Feb 16, 2022 13:39 EST)

FOR THE COUNTY:

SIGN: Michael R Timm
Michael R Timm (Feb 17, 2022 14:24 EST)

Contract Administrator

SIGN: Scott N. Guzy
Scott N. Guzy (Feb 17, 2022 15:11 EST)

Scott N. Guzy, CPPO, MBA, Purchasing Administrator

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This Contract is organized and divided into the following Sections for the convenience of the Parties.

- Section 1. Contract Definitions
- Section 2. Contract Term and Renewal
- Section 3. Contract Administration and Amendments
- Section 4. Contract Termination
- Section 5. Scope of Deliverables and Financial/Payment Obligations
- Section 6. County's G2G Marketplace Administration
- Section 7. Contractor's Warranties and Assurances
- Section 8. Liability
- Section 9. Insurance and Bond Requirements
- Section 10. Intellectual Property
- Section 11. Confidential Information
- Section 12. County Data
- Section 13. Information Technology Standards
- Section 14. General Terms and Conditions

§1. CONTRACT DEFINITIONS

The following words when printed with the first letter capitalized shall be defined and interpreted as follows, whether used in the singular or plural, nominative or possessive case, and with or without quotation marks:

- 1.1. **"Amendment"** means any change, clarification, or modification to this Contract.
- 1.2. **"Business Day"** means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding County designated holidays.
- 1.3. **"Claims"** means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the County or for which the County may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation, facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.

- 1.4. **“Confidential Information”** means all information and data that the County is required or permitted by law to keep confidential, which includes computer software, cybersecurity assessments and plans and measures to protect the County’s security.
- 1.5. **“Contract”** means this document and any other documents expressly incorporated herein.
- 1.6. **“Contractor”** means the entity or person listed under “Contractor” on the first page of this Contract and Contractor Employee.
- 1.7. **“Contractor Employee”** means any employee; officer; director; member; manager; trustee; volunteer; attorney; licensee; contractor; subcontractor; independent contractor; subsidiary; joint venture; partner or agent of Contractor; and any persons acting by, through, under, or in concert with any of the above, whether acting in their personal, representative, or official capacities. Contractor Employee shall also include any person who was a Contractor Employee at any time during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.8. **“Contract Documents”** mean the following documents, which this Contract includes and incorporates:

Exhibits (Applicable if Checked)

- 1.8.1. ☒ Exhibit I: Insurance Requirements
- 1.8.2. ☒ Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements)
- 1.8.3. ☒ Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information)
- 1.8.4. ☒ Exhibit IV: Requirements for Contractors with Access to Criminal Justice Information
- 1.8.5. ☐ Exhibit V: Federally Funded Contract Requirements
- 1.8.6. ☒ Exhibit VI: Software License(s): Dell Commercial Terms of Sale, Dell EULA, VMWARE EULA
- 1.8.7. ☐ Exhibit VII: License for Use of County Servicemark
- 1.8.8. ☒ Exhibit VIII: Acknowledgement of Independent Employment Status
- 1.8.9. ☒ Exhibit IX: Scope of Contractor Deliverables/Financial Obligations
- 1.9. **“County”** means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and “County Agents” as defined below.

- 1.10. **"County Agent"** means any elected and appointed officials; directors; board members; council members; commissioners; employees; and volunteers of the County; whether acting in their personal, representative, or official capacities. "County Agent" shall also include any person who was a "County Agent" anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and in that capacity.
- 1.11. **"County Data"** means information or data collected, used, processed, stored, or generated in any format, by or on behalf of the County, in connection with the Deliverables, which shall include, but not be limited to: (a) personal health information (PHI) as defined under the Health Insurance Portability and Accountability Act (HIPAA) and Exhibit II, (b) personally identifiable information (PII) as defined in Exhibit III, and (c) Criminal Justice Information defined in Exhibit IV if the Exhibit(s) are incorporated into the Contract. County Data includes Confidential Information as defined in this Contract.
- 1.12. **"County Network"** means County owned, leased, or licensed equipment, hardware, and software that is interconnected via fiber optic, wireless, or other communication mediums for the purposes of County hosting, processing, using, sharing, and/or transporting data, video, voice, or any other form of information.
- 1.13. **"Day"** means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
- 1.14. **"Deliverables"** means goods and/or services provided under this Contract, whether tangible or intangible, and may be more specifically described in the Exhibits.
- 1.15. **"Effective Date"** means midnight on the date listed on the first page of this Contract.
- 1.16. **"Expiration Date"** means 11:59.59 p.m. on the date listed on the first page of this Contract.
- 1.17. **"E-Verify"** means an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Information and the registration process are found at the E-Verify website: <https://e-verify.uscis.gov/enroll>.
- 1.18. **"G2G Marketplace Website"** means an Internet site used by County to provide information to PPBs about businesses providing services to County and agreements used by County and available to PPBs to procure services.
- 1.19. **"Intellectual Property"** means any developments, improvements, designs, innovations, and materials that may be the subject of a trademark/servicemark, copyright, patent, trade secret, which includes ideas, concepts, inventions, and processes related to the development and operation of computer software and systems.

- 1.20. **"Iran-Linked Business"** is defined in the Michigan Compiled Laws (MCL), specifically MCL 129.312, being Section 2 of Public Act 517 of 2012.
- 1.21. **"Not to Exceed Amount"** means the dollar amount listed on the first page of this Contract, unless amended. The "Not to Exceed Amount" is not the County's financial obligation under this Contract, but the maximum amount that can be paid to Contractor during the term of this Contract.
- 1.22. **"PPB"** which stands for Participating Public Body, means an entity created by state or Federal law which is primarily funded by or through a governmental authority and which registers to access County's G2G Marketplace Website.
- 1.23. **"Proposal"** means Contractor's response or bid to the County's Request for Proposal, Request for Qualifications, or Request for Quotes.
- 1.24. **"Purchase Order"** means the County's written request to Contractor for Deliverables pursuant to this Contract. The Purchase Order may include terms regarding delivery schedule, payment, and transportation.
- 1.25. **"Purchasing"** means the Purchasing Division of Oakland County.

§2. CONTRACT TERM AND RENEWAL

- 2.1. **Contract Term.** This Contract shall begin on the Effective Date and shall end on the Expiration Date. Once the Contract has expired Contractor will no longer be listed in the G2G Marketplace, unless a new Contract is entered into by the Parties.
- 2.2. **Contract Renewal.** Unless otherwise provided herein, the Parties are under no obligation to renew or extend this Contract after the Expiration Date. This Contract may only be extended by an Amendment.
- 2.3. **Legal Effect.** This Contract shall be effective and binding when all of the following occur: (a) this Contract is signed by a Contractor Employee, legally authorized to bind Contractor; (b) this Contract is signed by an authorized County Agent; (c) all Contractor certificates of insurance, required by this Contract, are submitted and accepted by Purchasing; and (d) any other conditions precedent to this Contract have been met.

§3. CONTRACT ADMINISTRATION AND AMENDMENTS

- 3.1. **Contract and Purchase Order Issuance.** Purchasing shall issue this Contract and any Purchase Orders that may be required. Purchasing is the sole point of contact in the County regarding all procurement and contractual matters relating to this Contract and any Purchase Orders. Purchasing is the only County office/department authorized to make any Amendments to this Contract or Purchase Orders.

- 3.2. **Purchase Orders.** Purchase Orders issued under this Contract are governed by the terms and conditions of this Contract and are included and incorporated herein.
- 3.3. **Project Managers.** Each Party may designate an employee or agent to act as a Project Manager. If Project Managers are selected, they shall be listed, along with their duties, in Exhibit IX. Unless otherwise stated in Exhibit IX, the County's Project Manager has no authority to amend this Contract.
- 3.4. **Contract Administrators.** The County shall designate an employee or agent to act as Contract Administrator(s). Contractor may designate its employee or agent to act as Contract Administrator(s). The Contract Administrators shall be listed on the first page of this Contract. The County's Contract Administrator(s) shall be responsible for monitoring and coordinating day-to-day activities under this Contract, reviewing Deliverables and invoices, and submitting requests for Amendments to Purchasing. The County's Contract Administrator(s) have no authority to amend this Contract.
- 3.5. **Contract Amendments.** All Amendments to this Contract must be in writing. This Contract shall not be amended by any packing slip, Purchase Order, invoice, click through license agreement, or Contractor policies or agreements published on Contractor's website or otherwise. Amendments to this Contract shall be issued only by Purchasing. The Amendment shall be effective when signed by an authorized Contractor Employee and an authorized County Agent.
- 3.6. **Unauthorized Changes.** Contract changes shall not be effective until an Amendment containing the change is executed according to the procedures described in this Contract. If the Contractor is directed to perform work that Contractor believes is a change in the Contract/Deliverables, then Contractor must notify Purchasing that it believes the requested work is a change to the Contract before performing the requested work. If Contractor fails to notify Purchasing before beginning the requested work, then Contractor waives any claims for additional compensation for performing the requested work. If Contractor begins work that is outside the scope of this Contract or begins work before an Amendment is executed and then stops performing that work, Contractor must, at the request of the County, undo any out-of-scope work that the County believes would adversely affect the County.
- 3.7. **Precedence of Contract Documents.** In the event of a conflict, the terms and conditions contained in Sections 1 through 14 of this Contract shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein. Terms and conditions contained in Contractor invoices, packing slips, receipts, acknowledgments, click-through licenses, and similar documents shall not change the terms and conditions of this Contract.

§4. CONTRACT TERMINATION

4.1. **County Termination.** In addition to any other legal rights the County may have to terminate or cancel this Contract, the County may terminate the Contract as follows:

4.1.1. **Immediate Termination.** The County may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor, if any of the following occur: (a) Contractor, officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a felony criminal offense or a criminal offense involving or related to Contractor's business; or (b) if any third-party funding for this Contract is reduced or terminated.

4.1.2. **Termination for Convenience.** The County may terminate or cancel this Contract, in whole or part, at any time, upon ninety (90) Days' notice to Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice.

4.2. **Contractor Termination.** Contractor may terminate or cancel this Contract, in whole or part, upon one hundred and eighty (180) Days' notice to the County, if the County materially breaches any duty or obligation contained herein and within such notice period has failed or has not reasonably attempted to cure the breach. The effective date of termination or cancellation and the specific alleged default shall be clearly stated in the notice to the County.

4.3. **County's Obligations Upon Termination.** The County's sole obligation in the event of termination or cancellation of this Contract is for payment of the actual Deliverables provided to the County before the effective date of termination. Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages, any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination or cancellation of this Contract. The County shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein. If the County chooses to terminate the Contract in part, then the charges payable under this Contract must be equitably adjusted to reflect those Deliverables that are terminated.

4.4. **Contractor's Obligations Upon Termination.** If the County terminates this Contract, for any reason, then Contractor must do the following: (a) cease providing all Deliverables as specified at the time stated in the notice of termination; (b) take any action necessary, or as the County may direct, to preserve and protect Deliverables or other property derived or resulting from the Contract that is in Contractor's possession; (c) return all materials and property provided to Contractor by the County; (d) unless otherwise directed by the County, transfer title in and deliver to the County all Deliverables in the possession of

Contractor or Contractor Employees (which Deliverables are transferred to the County “As-Is”, except to the extent the amounts paid by the County for these Deliverables include warranties or warranty services and, in that situation, the Deliverables will be transferred with the warranty or warranty services and not “As-Is”); and (e) take any action to mitigate and limit any potential damages, including terminate or limit, as applicable, those subcontracts and outstanding orders for materials and supplies connected with or related to this Contract.

- 4.5. **Assumption of Subcontracts.** If Contractor is in breach of this Contract and the County terminates this Contract, then the County may assume, at its option, any subcontracts and agreements for Deliverables provided under the Contract and may pursue completion of the Deliverables by replacement Contract or otherwise as the County, in its sole judgment, deems expedient.

§5. SCOPE OF DELIVERABLES AND FINANCIAL/PAYMENT OBLIGATIONS

- 5.1. **Performance of Deliverables.** Contractor shall provide all Deliverables identified in and as set forth in Exhibit IX, any Purchase Orders, or any Amendments to this Contract.
- 5.2. **Software License(s).** If Contractor requires County to comply with a software license or any other third-party terms, the software license or other third-party terms must be attached to this Contract in Exhibit VI, and the Parties shall follow the terms and conditions therein. County is not obligated to follow or comply with any software license or other third-party terms that are not attached to or included in this Contract. Unless specifically agreed to by County in writing, if County Agents are required to accept click through license terms or any other terms not included in this Contract to access or use any of the Deliverables in this Contract, the terms and conditions of those click through licenses and other terms are without force and effect.
- 5.3. **Financial Obligations.** Except as otherwise set forth in this Contract, the County’s sole financial obligation under this Contract shall be set forth in the Exhibit IX. The amount and manner of payment of the financial obligation shall be set forth in Exhibit IX and may be in the Software License Exhibit VI, if applicable, or a Purchase Order.
- 5.4. **Payment Obligations.** Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the County’s Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice, within sixty (60) days of Contractor’s performance of the Deliverables listed in the invoice. Invoices shall contain the following information: (a) County Contract Number; (b) dates of Deliverables; (c) itemized list of Deliverables; (d) Contractor Tax ID Number (federal and State); (e) licenses; and (f) any other information reasonably requested by Purchasing. Unless otherwise set forth in the Exhibits, the County will pay undisputed invoices, which comply

with this section (5.4), within sixty (60) days after receiving the invoice. Unless otherwise set forth in the Exhibits, the County shall only pay Contractor for Deliverables under this Contract and not any subcontractors or assignees of Contractor.

5.5. **Not to Exceed Amount.** The amount due and owing to Contractor, under this Contract, shall not exceed the "Not to Exceed Amount." If Contractor can reasonably foresee that the total financial obligation for the Contract will exceed the "Not to Exceed Amount," then Contractor shall provide Purchasing with notice of this fact as soon as possible, but no later than ten (10) days before this event.

5.6. **County Not Obligated for Penalties/Costs/Fines.** The County shall not be responsible or liable for any cost; fee; fine; penalty; or other assessment of any kind that is incurred or suffered by Contractor in connection with or resulting from Contractor's performance of this Contract under any circumstances.

5.7. **Set-Off of County Costs.** If the County incurs any costs (not specified in this Contract), loss or damage that is caused by or results from Contractor or Contractor Employees, then the County has the right to set-off those costs, loss, and/or damage from any amounts due and owing Contractor. This set-off includes, but is not limited to, withholding payment in an amount equal to the cost of any County-provided equipment, supplies, or badges, or other property that are not returned by Contractor upon completion, termination, or cancellation of this Contract. County also reserves the right at any time to set-off any amounts it owes to Contractor under this Agreement against any amounts that Contractor owes to County.

5.8. **In-Kind Services.** Unless expressly provided herein, this Contract does not authorize any in-kind services by either Party.

§6. COUNTY'S G2G MARKETPLACE ADMINISTRATION.

6.1. **Deliverables and Terms Extended to PPBs.** After a competitive bidding and selection process by County, Contractor was chosen to provide the Deliverables, described more fully in the Exhibit IX, to County. Contractor shall offer the pricing, terms, and conditions in this Contract to a PPB, to enable a PPB to make purchases from Contractor according to the terms herein. Notwithstanding the foregoing, Contractor and a PPB may negotiate customized terms at their own discretion.

6.2. **No County Liability.** County shall not be a party to a contract or purchase order of any type between Contractor and a PPB. County shall not have any liability, of any sort, to Contractor, a PPB, or any other third party, for any harm, damage, loss, or action that may arise from purchases made by any PPB pursuant to the terms of this Contract.

6.3. **Contractor and PPB Direct Dealing.** PPBs must deal directly with Contractor for any transactions such as purchases, invoices, price questions, disputes, etc. that relate to their

individual agreement with Contractor. Contractor must respond timely to PPB inquiries. Failure to do so may result in County removing the Contract and Contractor's Information from the G2G Marketplace Website.

- 6.4. **G2G Marketplace Website.** County will provide the following information on its G2G Marketplace website:
 - 6.4.1. State that the Contract was the result of a competitive bidding process.
 - 6.4.2. Provide Contractor's contact information for inquiries.
 - 6.4.3. Acknowledge that the County will receive a benefit from purchases subject to this Contract.
 - 6.4.4. Provide a County Liaison to answer questions concerning the expiration date of the Contract, the procedure for purchasing off the Contract, and the competitive bidding process followed by County.
- 6.5. **Contractor Information.** Contractor shall provide the following information to County and shall update the information timely whenever changes occur:
 - 6.5.1. Description of Contractor's **Deliverables** relating to those requested in the Request for Proposal will be placed on the G2G Marketplace Website.
 - 6.5.2. Every six months Contractor shall provide County with a "Contract Usage Statement" which means the names, Scope of Services selected, quantities purchased, and dollar amount of each agreement signed by a PPB using this Contract. Contractor may provide the dollar amount of an agreement only if a PPB will not permit disclosure of the other items. Failure to provide the Contract Usage Statement information to County may result in Contractor being removed from the G2G Marketplace website.
 - 6.5.3. The names of two representatives to act as a primary and secondary point of contact to provide County with the Contract Usage Statements and other information required in this Contract.
- 6.6. **Administrative Fee.** In recognition of the benefits to Contractor for County providing information to PPBs and potential participants, and the costs savings to Contractor for having this information available, Contractor shall pay County an administrative fee or other benefit described below in this section (the "Administrative Fee") if Contractor offers the pricing, terms, and/or conditions in this Contract to a PPB. The Administrative Fee will correspond to the percent of the revenue Contractor receives from orders, purchases, and/or contracts it has entered into with PPBs who are receiving goods or services from Contractor based on the pricing, terms, and/or conditions of this Contract provided in the below table in section 6.6.1. Contractor shall pay the Administrative Fee to the County on a quarterly basis after the Contractor is paid by the PPB. County may

provide Contractor with additional instructions regarding the procedure and/or manner of paying the Administrative Fee to County. In addition to and without limiting any other remedies allowed by law or equity, Contractor's failure to timely pay the Administrative Fee may, in County's sole discretion, result in removal of Contractor from the G2G Marketplace website.

- 6.6.1. **Administrative Fee Table.** The Administrative Fee that Contractor shall pay to County is as follows:

	<u>Percent of Revenue</u>
<u>Good/Service</u>	
Services	3%
Hardware	2%
Software	1%
"Pure" products/services	3%

§7. CONTRACTOR'S WARRANTIES AND ASSURANCES

- 7.1. **Full Knowledge of Contract Expectations.** Contractor warrants that before submitting its Proposal and/or entering into this Contract, it had a full opportunity to review all County requirements and/or expectations for this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform the Contract as specified herein.
- 7.2. **Complete and Accurate Representations.** Contractor certifies that all statements, assurances, records, and materials submitted to the County in connection with seeking and obtaining this Contract have been truthful, complete, and accurate.
- 7.3. **Access to Contractor Policies.** If the Parties agree in this Contract to follow any Contractor policies, such as acceptable use or privacy policies, then Contractor shall retain each version of such policy with the effective dates and shall promptly provide such to the County, if requested.
- 7.4. **Grant Compliance.** If any part of this Contract is supported or paid for with any State, federal, or other third-party funds granted to the County, then Contractor shall comply

with all applicable grant requirements. Upon request of Contractor, the County shall provide Contractor with a copy of the applicable grant requirements.

- 7.5. **Contractor Incidental Expenses.** Except as otherwise expressly provided in this Contract, Contractor shall be solely responsible and liable for all costs and expenses associated or needed to perform this Contract, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.
- 7.6. **Equipment and Supplies.** Contractor is responsible for providing all equipment and supplies to perform this Contract, which are not expressly required to be provided by the County.
- 7.7. **Contractor Employees.**
- 7.7.1. **Number and Qualifications of Contractor Employees.** Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to perform this Contract. Contractor shall ensure all Contractor Employees have the knowledge, skill, and qualifications to perform this Contract and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.
- 7.7.2. **Control and Supervision of Contractor Employees.** Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employees.
- 7.7.3. **Removal or Reassignment of Personnel at the County's Request.** Contractor shall remove a Contractor Employee performing work under this Contract at the County's request provided that the County's request is based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the removal of a Contractor Employee results in an unanticipated delay, which is attributable to the County, then this delay shall not be considered a breach of the Contract and the terms and conditions of this Contract effected by the removal will be adjusted accordingly.
- 7.7.4. **Contractor Employee Identification.** If requested by the County, Contractor Employees shall wear and display a County-provided identification badge at all times while working on County premises. In order to receive a County identification badge, a Contractor Employee shall sign the "Acknowledgement of Independent Contractor Status" form, Exhibit VIII to this Contract. Contractor shall return all County-provided identification(s) upon completion of Contractor's obligations under this Contract.
- 7.7.5. **Background Checks.** At the County's request, Contractor Employees performing work under this Contract shall be subject to a background check by the County. The scope of the background check is at the discretion of the County and the results will be used to

determine Contractor Employee's eligibility to perform work under this Contract. Any request for background checks will be initiated by the County and will be reasonably related to the type of work requested. Contractor and Contractor Employees shall provide all information or documents necessary to perform the background check.

- 7.7.6. **Contractor Employee Expenses.** All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance). Contractor warrants that all Contractor Employees shall fully comply with and adhere to the terms of this Contract. Contractor shall be solely liable for all applicable Contractor Employees' federal, state, or local payment withholdings or contributions and/or all Contractor Employee related pension or welfare benefits plan contributions under federal or state law. Contractor shall indemnify, defend, and hold the County harmless for all Claims against the County by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee including, but not limited to, Worker's Compensation, disability pay, or other insurance of any kind.
- 7.7.7. **Contractor's Compliance with the Patient Protection and Affordable Care Act.** If Contractor is subject to the Patient Protection and Affordable Care Act ("ACA"), PL 111-148, 124 Stat 119, then Contractor shall ensure that all Contractor Employees, under assignment to the County, and their dependents, as defined by the ACA, are provided with or have access to insurance as required by the ACA. If Contractor is subject to the ACA, Contractor warrants it offers group health coverage to Contractor Employees and their dependents that is affordable, that provides minimum essential coverage and value, and that each offer of coverage meets the timing requirements of the ACA. Contractor warrants, whether or not it is subject to the ACA, that it will pay all applicable fees, taxes, or fines, as set forth in the employer mandates of the ACA under Tax Code §4980H and related regulations for any Contractor Employee, whether the fee, tax, or fine is assessed against the Contractor or the County.
- 7.8. **Acknowledgment of Independent Contractor Status.**
- 7.8.1. **Independent Contractor.** Nothing in this Contract is intended to establish an employer-employee relationship between the County and Contractor or any Contractor Employee. In no event, shall Contractor Employees be deemed employees, agents, volunteers, or subcontractors of the County. Contractor shall ensure that Contractor Employees are apprised of their status and the limitations independent contractors have of this status.
- 7.8.2. **Contractor/Contractor Employee Representations.** Contractor and/or Contractor Employees shall not represent themselves as County employees. Contractor shall ensure that Contractor Employees do not represent themselves as County employees.

- 7.8.3. **County Benefits and Plans.** Contractor and Contractor Employees shall not be entitled to participate in any County employee benefit plans and programs, including but not limited to, retirement, deferred compensation, insurance (including without limitation, health, disability, dental, and life), and vacation pay. This limitation includes access to benefit plans and programs that are not described by a written plan. However, Contractor Employees who are retired County Employees may receive vested post-employment benefits such as retiree health care and pension benefits from Oakland County.
- 7.8.4. **County Reliance.** The County entered into this Contract in reliance of the representations made by Contractor regarding its understanding of the role of independent contractors, its stated relationship to Contractor Employees, and other representations Contractor has made regarding the management and performance oversight of Contractor Employees.
- 7.8.5. **Independent Employment Status.** If Contractor provides Contractor Employees for staffing and/or leasing services to County, those Contractor Employees shall sign Exhibit VIII, Acknowledgement of Independent Employment Status, prior to performing services for the County.
- 7.9. **Permits and Licenses.** Contractor shall be responsible for obtaining and maintaining, throughout the term of this Contract, all licenses, permits, certificates, governmental authorizations, and business/professional licenses necessary to perform this Contract. Upon request by the County, Contractor shall furnish copies of any permit, license, certificate, or governmental authorization necessary to perform this Contract.
- 7.10. **E-Verify.** In accordance with Miscellaneous Resolution No. 09116 (BOC Minutes, July 30, 2009, pp 37-38), unless otherwise exempted, all service contractors who wish to contract with the County to provide services must first certify they have registered with, will participate in, and continue to utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor. Breach of this term or condition is considered a material breach of this Contract. Contractor's execution of this Contract constitutes a certification that they are authorized to certify on behalf of Contractor and do hereby certify on behalf of Contractor that the Contractor has registered with, has and will participate in, and does and will continue to utilize once registered and throughout the term of this Contract and any permissible extension hereof, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor.
- 7.11. **Iran-Linked Business Certification.** Contractor certifies that it is not an Iran-Linked Business. Contractor further certifies that it was not an Iran-Linked Business at the time it

submitted its Proposal for this Contract. Contractor must promptly notify the County, if Contractor becomes an Iran-Linked Business at any time during this Contract.

- 7.12. **Foreign Adversary Certification.** If Contractor supplies technology or equipment to County, Contractor certifies that the technology and/or equipment was not produced, assembled or manufactured by a foreign adversary, as defined, and as prohibited by the federal government.
- 7.13. **Taxes.**
- 7.13.1. **Contractor Taxes.** Contractor shall collect and pay its local, state, and federal taxes, including but not limited to, all employment taxes, sales taxes, personal property taxes, and real property taxes. The County shall not be liable to or required to reimburse Contractor for any local, state, or federal tax of any kind.
- 7.13.2. **County Tax-Exempt.** The County is exempt from state and local sales tax, personal property tax, and real property tax. Prices under this Contract shall not include taxes, unless the County is not tax-exempt for a specific Deliverable. Exemption certificates for sales tax will be furnished upon request.
- 7.14. **Warranty for Services.** Contractor warrants that all Deliverables that are services shall be performed in compliance with all applicable laws, statutes, regulations, ordinances, requirements and specifications in the Exhibits, industry best practices and care, professional standards, and in a diligent, workmanlike, and expeditious manner. Contractor acknowledges and agrees that time is of the essence for all Deliverables that are services.
- 7.15. **Warranty for Goods.** All Deliverables that are goods shall be subject to the following warranties:
- 7.15.1. **Warranty of Merchantability.** Goods provided by Contractor pursuant to this Contract shall: (a) be merchantable; (b) be of good quality; (c) be fit for their ordinary purpose; (d) be adequately contained and packaged; and (e) conform to the specifications and descriptions contained in this Contract. Contractor acknowledges and agrees that time is of the essence for providing all Deliverables that are goods.
- 7.15.2. **Warranty of Fitness for a Particular Purpose.** If Contractor knows or has reason to know that the goods will be used for a particular purpose and the County is relying on Contractor's skill or judgment to select or furnish the goods, then there is a warranty that the goods are fit for a particular purpose.
- 7.15.3. **Warranty of Title.** All goods conveyed to the County shall be conveyed and transferred: (a) with good title; (b) free from any security interest, lien, or encumbrance that the

County did not have knowledge of when the Contract was executed; and (c) free of any rightful claim of infringement or similar claim by a third-party.

- 7.16. **ADA and Section 508 Compliance.** If Contractor is providing a Deliverable that requires County Agents or the public to use a software application or to access a website, Contractor warrants that end users can utilize the software or access the website in accordance with the accessibility requirements of the ADA and the Rehabilitation Act of 1973. Contractor's Deliverable will conform, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may provide a description of conformance with the above-mentioned specifications by means of a completed Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or another comparable document. Any additional compliance requirements shall be specified in the Scope of Contractor's Deliverables Exhibit IX.

§8. LIABILITY

- 8.1. **Contractor Indemnification.** Contractor shall indemnify, defend, and hold the County harmless from all Claims, incurred by or asserted against the County by any person or entity, which are alleged to have been caused directly or indirectly from the acts or omissions of Contractor or Contractor's Employees. The County's right to indemnification is in excess and above any insurance rights/policies required by this Contract.
- 8.2. **No Indemnification from the County.** Contractor shall have no rights against the County for indemnification, contribution, subrogation, or any other right to be reimbursed by the County, except as expressly provided herein.
- 8.3. **County Limitation of Liability.**
- 8.3.1. County shall not be liable for any consequential, incidental, indirect, remote, speculative, punitive, exemplary, liquidated, treble, or special damages, including, but not limited to, loss of profit, opportunity, use, revenue, data, or goodwill, whether based in whole or in part in contract, tort, equity, strict liability, under statute, or any other theory of liability, regardless of whether such damages were foreseeable or contemplated and even if County was advised or aware of the possibility of such damages.
- 8.3.2. County shall not be liable in contract, tort, equity, strict liability, under statute, or any other theory of liability, for total aggregate damages in excess of County's payment obligations to Contractor for the Deliverables under this Contract.

§9. INSURANCE AND BOND REQUIREMENTS

- 9.1. **Contractor Provided Insurance.** At all times during this Contract, Contractor shall obtain and maintain insurance according to the requirements listed in Exhibit I.
- 9.2. **Contractor Provided Bonds.** Pursuant to Public Act 213 of 1963, if the Contract Not to Exceed Amount exceeds fifty thousand dollars (\$50,000.00) and the Contract is for the construction, alteration, or repair of any public building or public work or improvement of the County, then the Contractor shall furnish, at its sole cost, a performance bond and a payment bond to the County, which shall become binding upon execution of the Contract. Each bond shall be in an amount fixed by the County, as set forth in Exhibit IX, but in no event shall each bond be less than 25% of the Contract Not to Exceed Amount.

§10. INTELLECTUAL PROPERTY

- 10.1. **Contractor Use of County Licensed Software.** In order for Contractor to perform this Contract, the County may permit Contractor or Contractor Employees to access certain Software licensed to the County. Contractor or Contractor Employees shall not transfer, remove, use, copy, or otherwise provide or make available such Software or documentation to any other person or entity, for any purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither Contractor nor Contractor Employee shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any Software. Neither Contractor nor Contractor Employee shall use any Software contrary to the provisions of any applicable Software license agreement or state or federal law.
- 10.2. **Contractor License to Use County Servicemarks.** If this Contract involves the use of County servicemarks, then Contractor is granted a license to use the servicemarks subject to the terms listed in Exhibit VII. Contractor shall only use the servicemarks as directed by the County in Exhibit VII. If Exhibit VII is not selected and attached to this Contract, Contractor shall not and has no right to use County servicemarks.
- 10.3. **Assignment of Rights.** In consideration for the performance of this Contract and the fees paid to Contractor, Contractor agrees to the following: (a) Contractor shall have no copyright, patent, trademark, or trade secret rights in County Intellectual Property; (b) any and all programs, inventions, and other work or authorship developed by Contractor while providing Deliverables to the County are works made for hire, created for, and owned exclusively by the County, unless otherwise specified in the Contract; (c) Contractor assigns to the County all rights and interest in County Intellectual Property, which Contractor has made or conceived or may make and conceive, either solely or jointly with others, either on or off County premises while performing this Contract or with the use of the time, material, or facilities of the County; and (d) Contractor and its applicable Contractor Employees shall sign any documents necessary for the County to

register patents, copyrights, or trademarks with federal or state agencies. Contractor shall ensure Contractor Employees assign their rights and interests in County Intellectual Property to the County.

- 10.4. **Infringement Remedies.** If, in either Party's opinion, any of the services or Deliverables supplied by Contractor or Contractor Employees are likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor shall at its own expense: (a) procure for County the right to continue using the services or Deliverables, or if this option is not reasonably available to Contractor; (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by County with appropriate credits to County and reimburse County for any losses or costs incurred as a consequence of County ceasing its use and returning it.

§11. CONFIDENTIAL INFORMATION

- 11.1. **Contractor Use of Confidential Information.** Contractor and Contractor Employees shall use appropriate safeguards to protect the confidentiality and integrity of Confidential Information. Contractor shall not reproduce, provide, disclose, or give access of Confidential Information to any Contractor Employee or third-party not having a legitimate need to know. Contractor and Contractor Employees shall only use the Confidential Information for performance of this Contract. Notwithstanding the foregoing, Contractor may disclose the Confidential Information, if required by law, statute, or other legal process; provided that Contractor: (a) gives the County prompt written notice of the impending disclosure; (b) provides reasonable assistance to the County in opposing or limiting the disclosure; and (c) makes only such disclosure as is compelled or required. This Contract imposes no obligation upon Contractor with respect to any Confidential Information which Contractor can establish by legally sufficient evidence: (a) was in possession of or was known by Contractor, prior to its receipt from the County, without any obligation to maintain its confidentiality; or (b) is obtained by Contractor from a third party having the right to disclose it, without an obligation to keep such information confidential.
- 11.2. **County Confidentiality Obligations.** County has no obligation to Contractor to keep confidential any information or records that are required to be disclosed by County under the Michigan Freedom of Information Act, 1976 PA 442, as amended (the "FOIA") nor shall County be obligated to inform or provide notice to Contractor regarding the disclosure of information or records that are required to be disclosed under the FOIA. Furthermore, County may disclose Confidential Information to third parties if required by law, statute, subpoena, court order, or other legal process.

- §12. COUNTY DATA.** If Contractor uses or possesses County Data in the performance of this Contract, then the following provisions contained in this section apply:
- 12.1. **Use of County Data.** Contractor and Contractor Employees shall have a limited license to County Data, including a license to collect, process, store, generate and display County Data but only to the extent necessary to provide services under this Contract. Contractor and Contractor Employees may not use, sell, rent, transfer, distribute, or otherwise disclose or make available County Data to any third-party, for Contractor's own purposes, or for the benefit of anyone other than the County, without the County's prior written consent, unless otherwise provided for within an Exhibit to this Contract.
- 12.2. **Unauthorized Access/Disclosure or Theft of County Data.** Contractor or Contractor Employees shall notify the County's Chief Information Office as soon as practicable but no later than forty-eight (48) hours of "Discovery" of suspected unauthorized access, acquisition, disclosure, or theft of County Data (a "Security Breach"). "Discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employees. Upon Discovery of a Security Breach, Contractor shall do the following: (a) take reasonable measures to promptly cure the deficiencies relating to the Security Breach in order to secure County Data; (b) cooperate with the County in investigating the occurrence, including making available all relevant records, logs, files, and data reporting materials required upon request by the County; and (c) comply with all applicable federal or state laws and regulations pertaining to unauthorized disclosures or as otherwise directed by the County. If Contractor uses or possesses County Data described in Exhibit II (HIPAA), Exhibit III (PII), or Exhibit IV (CJIS), Contractor shall follow the procedures in the applicable Exhibits governing the unauthorized access/disclosure or theft of County Data.
- 12.3. **Storage of County Data.** Contractor shall only store and process County Data at and from data centers located within the United States. Contractor shall not permit Contractor Employees to store County Data on portable devices, including, but not limited to, personal computers, tablets, laptops, and phones, except for portable devices that encrypt County Data at rest, have up-to-date firewall and antivirus protection, require multi-factor authentication to access, and are used and kept within the U.S. Contractor shall permit its Contractor Employees to access County Data remotely only as required to provide the Deliverables.
- 12.4. **Requirements for PCI Data.** If Contractor possesses, stores, processes, or transmits County Data that is considered Payment Card Industry (PCI) Data by the PCI Security Standards Council, Contractor shall comply with PCI Data Security Standard (DSS) and shall provide the County with a copy of its PCI DSS Attestation of Compliance and its Certificate of Compliance with PCI Data Security Standard on or before the Effective Date. Contractor warrants that it will keep its Certification of Compliance with PCI Data

Security Standard current and will provide evidence that the Certification of Compliance is current to County upon request.

12.5. **Response to Legal Request for County Data.** If the County receives a Court Order, a Freedom of Information Act (FOIA) request, or other legal request to provide County Data held by Contractor, then Contractor shall provide County Data to the County, in a format directed by the County, within the time frame required by law.

12.6. **Obligations upon Expiration, Termination or Cancellation of Contract.** At the County's sole discretion, upon expiration, termination, or cancellation of this Contract, Contractor shall return County Data in a mutually agreeable format in a prompt and orderly manner or provide for the secure disposal of County Data as directed by County.

§13. **INFORMATION TECHNOLOGY STANDARDS.** If Contractor provides a technology application or requires the use of the Internet to access a Deliverable, the following sections apply:

13.1. **County Standards.** If Contractor and Contractor Employees that will be given access to the County Network, Contractor and Contractor Employees shall comply with the County Electronic Communications and Use of Technology Policy.

13.2. **Implementation of Security Measures.** Contractor shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access to the County Network and County Data. Such measures shall be in accordance with security industry best practice and not less stringent than the measures Contractor applies to protect its own data of a similar kind.

13.3. **Completion of County Security Questionnaire.** Contractor warrants it has completed the County's security questionnaire. Each year, prior to the anniversary date of this Contract, and upon receipt of the County's security questionnaire, Contractor shall promptly provide the County with the answers to the County's security questionnaire.

§14. **GENERAL TERMS AND CONDITIONS**

14.1. **Access to County Property or Facilities.** As set forth in this Contract, Contractor has access to and the right to use County property and facilities necessary to perform this Contract. Unless otherwise provided in this Contract or Contractor receives prior written permission from the County's Director responsible for the department requiring access outside of Business Days, Contractor may only access and use County property and facilities for performance of this Contract on Business Days.

14.2. **Signs on County Property or Facilities.** Contractor shall not place any signs or advertisements on County property or facilities without the prior written permission of the County's Director of Facilities Management or successor, or designee.

- 14.3. **Use of County Property or Facilities.** While performing this Contract, Contractor shall keep County property or facilities and anything stored thereon in a clean, safe, sanitary, responsible, and healthful condition and shall keep the property and facilities in a manner that will not prevent or interfere with the County's performance of its functions.
- 14.4. **Removal of Contractor Personal Property.** At the expiration or termination of this Contract, Contractor shall leave County property or facilities in the same condition that Contractor found them and clean of all rubbish. Contractor shall remove all of its personal property within thirty (30) Days of expiration or termination of this Contract. If Contractor does not remove its personal property within the thirty (30) Day period, then the County may, at County's sole discretion, dispose of the personal property and bill Contractor for any costs associated with the removal and disposal or keep, have all rights to, and be the owner of the personal property.
- 14.5. **Damage to County Property or Facilities.** Contractor shall be responsible for any damage to any County property or a facility that is caused by Contractor or Contractor Employees. If damage occurs, the County shall make the necessary repairs and/or replacements or cause a third party to make the necessary repairs or replacements, provided, however, that Contractor shall reimburse the County for all costs associated with repairing and/or replacing the damaged property or facilities. Without limiting any of the County's other setoff rights in this Contract, County has the right to set-off those costs and/or damages from any amounts due and owing Contractor.
- 14.6. **Damage to Contractor's Property.** Contractor shall be solely liable and responsible for any property loss or damage resulting from fire, theft, or other means to Contractor's personal property located, kept, or stored on or at County property or facilities during performance of this Contract.
- 14.7. **County's Right to Suspend Contract Performance.** Upon written notice, the County may require Contractor to suspend performance of this Contract if Contractor has failed to comply with any federal, state, or local laws or any requirements contained in this Contract. The right to suspend performance of this Contract is in addition to the County's right to terminate and/or cancel this Contract. The County shall incur no penalty, expense, or liability to Contractor if the County suspends performance of this Contract under this Section.
- 14.8. **Discrimination.** Contractor, and its subcontractors under this Contract, shall not discriminate against an employee or an applicant for employment in hiring, any terms and conditions of employment or matters related to employment regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, genetic information, height, weight, disability, veteran status, familial status, marital

status or any other reason, that is unrelated to the person's ability to perform the duties of a particular job or position, in accordance with applicable federal and state laws.

- 14.9. **Conflict of Interest.** Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.301, *et seq.* and MCL 15.321, *et seq.*), no contracts shall be entered into between the County and any County Agent. To avoid any real or perceived conflict of interest, Contractor shall disclose to the County the identity of all Contractor Employees and all Family Members of Contractor Employees who: a) are employed by the County on the date the Contract is executed; and b) become employed by the County during the term of the Contract. Contractor shall also disclose to the County the identity of all County Agents and all Family Members of County Agents who: a) are employed by Contractor on the date the Contract is executed; and b) become employed by Contractor during the term of the Contract. For the purposes of this section, "Family Member" means a person's spouse or spouse's sibling or child; a person's sibling or sibling's spouse or child; a person's child or child's spouse; or a person's parent or parent's spouse, and includes these relationships as created by adoption, marriage, or law.
- 14.10. **Access and Records.** Contractor will maintain accurate books and records in connection with performance of this Contract for thirty-six (36) months after the end of this Contract and Contractor shall provide the County with reasonable access to such books and records, upon request.
- 14.11. **Audit.** The County or an independent auditor hired by the County may perform contract audits (in its sole discretion) and shall have the authority to access all pertinent records and data and to interview any Contractor Employee during the term of this Contract and for a period of three years after final payment. Contractor shall explain any audit findings, questioned costs, or other Contract compliance deficiencies to the County within thirty (30) Business Days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report and an action plan to resolve the audit findings. A copy of Contractor's response will be included in the final report. Failure by Contractor to respond in writing within thirty (30) Business Days shall be deemed acceptance of the draft audit report and will be noted in the final report.
- 14.12. **Assignments/Delegations/Subcontracts.**
- 14.12.1. **Prior Written Consent Required.** Except by operation of law, neither Party may assign, delegate, or subcontract any of its duties, obligations, or rights under this Contract without the prior written consent of the other Party; provided, however, Contractor may assign, delegate, or subcontract this Contract to an affiliate or subsidiary as long as the affiliate or subsidiary is adequately capitalized and can provide adequate written assurances to the County that the affiliate or subsidiary can perform this Contract. The

County may withhold consent, if the County determines that the assignment, delegation, or subcontract would impair performance of this Contract or the County's ability to recover damages under this Contract. Contractor shall also provide the County with adequate information to allow the County to make a determination regarding the assignment, delegation, or subcontract.

- 14.12.2. **Flow Down Clause Required.** Any assignment, delegation, or subcontract by Contractor must include a requirement that the assignee, delegee, or subcontractor will comply with the terms and conditions of this Contract. The assignment, delegation, or subcontract shall in no way diminish or impair performance of any term or condition of this Contract.
- 14.12.3. **Contractor Responsibility for Assigns/Delegates/Subcontractors.** If Contractor assigns, delegates, or subcontracts this Contract, in whole or in part, Contractor shall remain the sole point of contact regarding all matters under this Contract and shall remain liable for performance of this Contract. Contractor is solely responsible for the management of assignees, delegees, and subcontractors.
- 14.12.4. **Performance Required.** If an assignee, delegee, or subcontractor fails to perform as required under this Contract, Contractor shall contract with another entity for such performance. Any additional costs associated with securing another assignee, delegee, or subcontractor shall be the sole responsibility of Contractor.
- 14.13. **Non-Exclusive Contract.** This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the County may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee Contractor or any Contractor Employee any fixed or certain number of Deliverables.
- 14.14. **No Third-Party Beneficiaries.** Except as expressly provided for the benefit of the Parties and the PPBs, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' right in this Contract, or any other right in favor of any other person or entity.
- 14.14.1. **Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature:
Section 1. Contract Definitions, **Section 2.** Contract Term and Renewal, **Section 5.** Scope of Deliverables and Financial/Payment Obligations, **Section 6.** County's G2G Marketplace Administration, **Section 7.** Contractor's Warranties and Assurances, **Section 8.** Liability, **Section 9.** Insurance and Bond Requirements, **Section 10.** Intellectual Property, **Section**

11. Confidential Information, Section 13. Information Technology Standards, and Section 14. General Terms and Conditions; and if incorporated into this Contract, Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements), Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information), and Exhibit IV: Requirements for Contractors with Access to CJIS Data (Criminal Justice Information Security).

- 14.15. **Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the County.
- 14.16. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, executive orders, insurance policy requirements, and requirements applicable to its activities under this Contract. Contractor shall comply with all applicable laws and regulations related to the import, export, re-export, transfer, shipping, sale, re-sale, and/or use of goods, services, information, data, and equipment involving or related to this Contract.
- 14.17. **Force Majeure.** Notwithstanding any other term or condition of this Contract, neither Party shall be liable for failure to perform contractual duties or obligations caused by events beyond their reasonable control, including but not limited to: (a) acts of public enemies; (b) natural disasters; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) strikes, lockouts, work stoppages, or other labor difficulties; or (h) compliance with law. Reasonable notice shall be given to the affected Party of such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its contractual duties or obligations if a reasonably anticipated, insurable business risk, such as business interruption or any insurable casualty or loss occurs.
- 14.18. **Notices.**
- 14.18.1. **Written Notice.** All notices required under this Contract shall be in writing. Notices shall be effective: (a) the next Business Day, if personally delivered; (b) the third Business Day, if sent by U.S. mail, postage prepaid, return receipt requested; (c) the next Business Day, if sent by a nationally recognized overnight express courier with a reliable tracking system; or (d) the next Business Day with a written response or receipt of confirmation, if sent by e-mail or fax.
- 14.18.2. **Notice to Contractor.** Unless otherwise specified, Notice to Contractor shall be addressed to the Contract Administrator listed on the first page of this Contract.

- 14.18.3. **Notice to County.** Unless otherwise specified herein, Notice to the County shall be addressed to Purchasing, the County Project Manager (if applicable), and the County Contract Administrator(s) listed on the first page of this Contract.
- 14.19. **Captions.** Section and subsection numbers, captions, and any index to sections or subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this Contract. In this Contract, for any noun or pronoun, use of the singular or plural form, use of the nominative, possessive, or objective case, and any reference to gender (masculine, feminine, and neuter) shall mean the appropriate form, case, or gender as the context requires.
- 14.20. **Waiver.** Waiver of any term or condition under this Contract must be in writing and notice given pursuant to this Contract. No written waiver, in one or more instances, shall be deemed or construed as a continuing waiver of any term or condition of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.
- 14.21. **Cumulative Remedies.** A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 14.22. **Severability.** If a court of competent jurisdiction finds a term or condition of this Contract to be illegal or invalid, then the term or condition shall be deemed severed from this Contract. All other terms or conditions shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the County harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County.
- 14.23. **Dispute Resolution.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Manager (if applicable) and Contract Administrators for possible resolution.
- 14.24. **Governing Laws/Consent to Jurisdiction and Venue.** This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan, excluding Michigan's conflict of law principles. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court.

Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.

- 14.25. **Entire Contract.** This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

EXHIBIT I
INSURANCE REQUIREMENTS

During this Contract, the Contractor shall provide and maintain, at Contractor's expense, all insurance as set forth and marked below, protecting the County against any Claims, as defined in this Contract. The insurance shall be written for not less than any minimum coverage herein specified. Limits of insurance required in no way limit the liability of the Contractor.

Primary Coverages

Commercial General Liability Occurrence Form including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Broad Form Contractual including coverage for obligations assumed in this Contract;

\$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

Workers' Compensation Insurance with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 for each accident, \$500,000 for a disease for each employee, and \$500,000 for a disease policy limit. Contractor must comply with one of the following:

1. ☒ Be a Fully Insured or State approved self-insurer;
2. Sole Proprietors must submit a signed Sole Proprietor form; or
3. Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

Evidence of workers' compensation insurance is not necessary if neither Contractor nor any Contractor Employees come onsite to any County real property, land, premises, buildings, or other facilities in the performance of this Contract

Commercial Automobile Liability Insurance covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no company owned, hired or non-owned automobiles utilized in the performance of this Contract.

Commercial Umbrella/Excess Liability Insurance with minimum limits of \$2,000,000 each occurrence. This coverage shall be in excess of the scheduled underlying General Liability, Automobile Liability, and Employer's Liability Insurance policies with exclusions that are not broader than those contained in the underlying policies. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.

Supplemental Coverages. The following supplemental coverages are required if selected (checked):

1. ☒ **Professional Liability/Errors & Omissions Insurance** (i.e., Consultants, Technology Vendors, Architects, Engineers, Real Estate Agents, Insurance Agents, Attorneys, etc.) with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when the Contractor provides professional services that the County relies upon.
2. ☒ **Cyber Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when the Contractor has access to County IT systems and/or stores County data electronically.
3. ☐ **Commercial Property Insurance.** The Contractor shall be responsible for obtaining and maintaining insurance covering their equipment and personal property against all physical damage.
4. ☐ **Liquor Legal Liability Insurance** with a limit of \$1,000,000 each occurrence shall be required when liquor is served and/or provided by Contractor.
5. ☐ **Pollution Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when storage, transportation and/or cleanup & debris removal of pollutants are part of the services utilized.
6. ☐ **Medical Malpractice Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when medically related services are provided.
7. ☐ **Garage Keepers Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when County owned vehicles and/or equipment are stored and/or serviced at the Contractors facilities.
8. ☐ **Other Insurance Coverages** as may be dictated by the provided product/service and deemed appropriate by the County Risk Management Department.

General Insurance Conditions

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the County;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the County for

subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the County;

3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Contractor;
4. Contractors shall be responsible for their own property insurance for all equipment and personal property used and/or stored on County property;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the "County of Oakland" and its officers, directors, employees, appointees and commissioners as additional insured where permitted by law and policy form;
6. If the Contractor's insurance policy has higher limits than the minimum coverage requirements stated in this document the higher limits shall apply and in no way shall limit the overall liability assumed by the Contractor under contract.
7. The Contractor shall require its contractors or sub-contractors, not protected under the Contractor's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;
8. Certificates of insurance must be provided no less than ten (10) Business Days prior to the County's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and provide thirty (30) days' written notice of cancellation/material change endorsement to the insurance coverages required by this Exhibit.
9. All insurance carriers must be licensed and approved to do business in the State of Michigan along with the Contractor's state of domicile and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the County Risk Management Department.

EXHIBIT II

BUSINESS ASSOCIATE AGREEMENT

(Health Insurance Portability and Accountability Act Requirements)

Exhibit II is a Business Associate Agreement between Contractor ("Business Associate") and the County ("Covered Entity"). This Exhibit is incorporated into the Contract and shall be hereinafter referred to as "Agreement." The purpose of this Agreement is to facilitate compliance with the Privacy and Security Rules and to facilitate compliance with HIPAA and the HITECH Amendment to HIPAA.

- §1. DEFINITIONS.** The following terms have the meanings set forth below for purposes of the Agreement, unless the context clearly indicates another meaning. Terms used but not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule.
- 1.1 **Business Associate.** "Business Associate" means the Contractor.
 - 1.2 **CFR.** "CFR" means the Code of Federal Regulations.
 - 1.3 **Contract.** "Contract" means the document with the Purchasing Contract Number.
 - 1.4 **Contractor.** "Contractor" means the entity or individual defined in the Contract and listed on the first page of this Contract.
 - 1.5 **Covered Entity.** "Covered Entity" means the County of Oakland as defined in the Contract.
 - 1.6 **Designated Record Set.** "Designated Record Set" is defined in 45 CFR 164.501.
 - 1.7 **Electronic Health Record.** "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
 - 1.8 **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
 - 1.9 **HITECH Amendment.** "HITECH Amendment" means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.
 - 1.10 **Individual.** "Individual" is defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in 45 CFR 164.502(g).
 - 1.11 **Privacy Rule.** "Privacy Rule" means the privacy rule of HIPAA as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
 - 1.12 **Protected Health Information.** "Protected Health Information" or "PHI" is defined in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - 1.13 **Required By Law.** "Required By Law" is defined in 45 CFR 164.103.

- 1.14 **Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services or his or her designee.
- 1.15 **Security Incident.** “Security Incident” is defined in 45 CFR 164.304.
- 1.16 **Security Rule.** “Security Rule” means the security standards and implementation specifications at 45 CFR part 160 and part 164, subpart C.
- §2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.** Business Associate agrees to perform the obligations and activities described in this Section.
 - 2.1 Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate shall take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment, including, but not limited to, the following: (a) Business Associate shall appoint a HIPAA privacy officer and a HIPAA security officer; (b) Business Associate shall establish policies and procedures to ensure compliance with the Privacy and Security Rules; (c) Business Associate shall train its workforce regarding the Privacy and Security Rules; (d) Business Associate shall enter into a privacy/security agreement with Covered Entity; (e) Business Associate shall enter into privacy/security agreements with its subcontractors that perform functions relating to Covered Entity involving PHI; (f) Business Associate shall conduct a security risk analysis; and (g) Business Associate shall provide documentation upon request in relation to performance under this section.
 - 2.2 Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
 - 2.3 Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
 - 2.4 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of law or this Agreement.
 - 2.5 Business Associate shall report to Covered Entity any known Security Incident or any known use or disclosure of PHI not permitted by this Agreement.
 - 2.6 Effective September 23, 2009 or the date this Agreement is signed, if later, Business Associate shall do the following in connection with the breach notification requirements of the HITECH Amendment:
 - 2.6.1 If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.402, Business Associate shall notify Covered Entity without unreasonable delay but no later than ten (10) calendar days after discovery. For this purpose, “discovery”

means the first day on which the breach is known to Business Associate or should have been known by exercising reasonable diligence. Business Associate shall be deemed to have knowledge of a breach if the breach is known or should have been known by exercising reasonable diligence, to any person, other than the person committing the breach, who is an employee, officer, subcontractor, or other agent of Business Associate. The notification to Covered Entity shall include the following: (a) identification of each individual whose unsecured PHI has been breached or has reasonably believed to have been breached, and (b) any other available information in Business Associate's possession that the Covered Entity is required to include in the individual notice contemplated by 45 CFR 164.404.

- 2.6.2 Notwithstanding the immediate preceding subsection, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Covered Entity where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor, or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Covered Entity. In such case, Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the affected individual(s). Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.3 Where a breach of unsecured PHI involves more than five hundred (500) individuals and was committed by the Business Associate or its employee, officer, subcontractor, or other agent or is within the unique knowledge of Business Associate as opposed to Covered Entity, Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the media. Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.4 Business Associate shall maintain a log of breaches of unsecured PHI with respect to Covered Entity and shall submit the log to Covered Entity within thirty (30) calendar days following the end of each calendar year, so that the Covered Entity may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.
- 2.7 Business Associate shall ensure that any agent or subcontractor to whom it provides PHI, received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such information. Business Associate shall ensure that any such agent or subcontractor implements reasonable and appropriate safeguards to protect Covered Entity's PHI.
- 2.8 Business Associate shall provide reasonable access, at the written request of Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed in writing by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

- 2.9 Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs in writing or agrees to pursuant to 45 CFR 164.526.
- 2.10 Following receipt of a written request by Covered Entity, Business Associate shall make internal practices, books, and records reasonably available to the Secretary in order to determine Covered Entity's compliance with the Privacy Rule. The afore mentioned materials include policies and procedures and PHI relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures, to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures PHI from an Electronic Health Record in accordance with the HITECH Amendment.
- 2.12 Following receipt of a written request by Covered Entity, Business Associate shall provide to Covered Entity or an Individual information collected in accordance with Section 2 to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment.

§3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE. Business Associate may use and disclose PHI as set forth in this Section.

- 3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in the underlying service agreement between Covered Entity and Business Associate, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. If no underlying service agreement exists between Covered Entity and Business Associate, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity for the purposes of payment, treatment, or health care operations as those terms are defined in the Privacy Rule, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 3.2 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal

responsibilities of the Business Associate, provided that disclosures are Required by Law or Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that: (a) the disclosed PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person notifies the Business Associate of any known instances in which the confidentiality of the information has been breached.

- 3.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.5 Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

§4. OBLIGATIONS OF COVERED ENTITY.

- 4.1 Covered Entity shall notify Business Associate of any limitation(s) of Covered Entity in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2 Covered Entity shall notify Business Associate of any changes in or revocation of permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.3 Covered Entity shall use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, the Contract, and the Privacy Rule, until such PHI is received by Business Associate, pursuant to any specifications set forth in any attachment to the Contract.
- 4.4 Covered Entity shall manage all users of the services including its qualified access, password restrictions, inactivity timeouts, downloads, and its ability to download and otherwise process PHI.
- 4.5 The Parties acknowledge that Covered Entity owns and controls its data.
- 4.6 Covered Entity shall provide Business Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may affect Business Associate's use or disclosure of PHI. Covered Entity shall provide Business Associate with any changes in or revocation of permission to use or disclose PHI, to the extent the changes or revocation may affect Business Associate's permitted or required uses or disclosures. To the extent that the changes or revocations may affect Business Associate's permitted use or disclosure of PHI, Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522. Covered Entity may effectuate any and all such notices of non-private information via posting on Covered Entity's web site.

§5. EFFECT OF TERMINATION.

- 5.1 Except as provided in Section 5, upon termination of this Agreement or the Contract, for any reason, Business Associate shall return or destroy (at Covered Entity's request) all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
- 5.2 If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon receipt of written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI, which shall be for a period of at least six (6) years.

§6 MISCELLANEOUS.

- 6.1 This Agreement is effective when the Contract is executed or when Business Associate becomes a Business Associate of Covered Entity and both Parties sign this Agreement, if later. However, certain provisions have special effective dates, as set forth herein or as set forth in HIPAA or the HITECH Amendment.
- 6.2 **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- 6.3 **Amendment.** The Parties agree to take action to amend this Agreement as necessary for Covered Entity to comply with the Privacy and Security requirements of HIPAA. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.
- 6.4 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement shall survive the termination of this Agreement and/or the Contract.

EXHIBIT III
REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO COUNTY PII
(Personally Identifiable Information)

Exhibit III governs the requirements for Contractors with Access to Personally Identifiable Information (PII).

1. DEFINITIONS

- 1.1 **Security Breach** means the unauthorized access, acquisition, theft, or disclosure of PII.
- 1.2 **PII** (Personally Identifiable Information) means information that can be used to identify an individual, either alone or when combined with other personal or identifying information. PII includes, but is not limited to, a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver's license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information as well as the first name or first initial and last name linked to a social security number, driver's license or state personal identification card or financial account number in combination with a code or password that would permit access to a person's financial account(s) and as otherwise may be defined by state or federal laws governing the unauthorized access to personal information, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts.

2. OBLIGATIONS

- 2.1 Contractor shall not use or disclose PII other than as permitted or required by this Contract or as required by law.
- 2.2 Contractor shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PII that it creates, receives, maintains or transmits on behalf of the County.
- 2.3 Contractor shall mitigate, to the extent practicable, any harmful effect known to Contractor of the use or disclosure of PII in violation of law or this Contract.

- 2.4 If Contractor or Contractor Employees discover a Security Breach, Contractor shall notify the County without unreasonable delay, but no later than within forty-eight (48) hours of discovery. For this purpose, “discovery” means the first day on which the Security Breach is known to Contractor or Contractor Employees. The notification to the County shall include the following: (a) describe the Security Breach in general terms; (b) describe the type of personal information that is the subject of the Security Breach; (c) identify each individual whose PII has been breached or has reasonably believed to have been breached; (d) describe in general terms, what Contractor has done to prevent additional Security Breaches; and (e) provide any other available information in Contractor or subcontractor’s possession that may be necessary to comply with Security Breach notification laws.
- 2.5 If the County determines it will provide the notice of the Security Breach to the affected individuals and/or to governmental authorities, Contractor shall reimburse the County for: (a) its costs in notifying the affected individuals; (b) the cost of third-party credit and identify monitoring services to each of the affected individuals with compromised PII for no less than twenty-four (24) months following the date of notification to each individual; and (c) costs associated with the Security Breach, including but not limited to any costs incurred by the County in investigating and resolving the Security Breach, including reasonable fees associated with such investigation and resolution. Without limiting Contractor's obligations of indemnification as described in the Contract, Contractor shall indemnify, defend, and hold harmless the County for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the County in connection with the Security Breach. Contractor shall reimburse County for the applicable costs described above within thirty (30) days of receipt of an itemization of costs incurred by the County because of the Security Breach.
- 2.6 Within ten (10) calendar days of its discovery of the Security Breach, Contractor shall provide the County with a detailed plan describing the measures Contractor will undertake to prevent a future Security Breach. The County shall have the right to audit, inspect and test Contractor’s new safeguards put in place because of the Security Breach. Contractor shall be responsible for recreating lost County Data in the manner and on the schedule set by the County without charge to the County.

EXHIBIT IV

REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO CJIS DATA (Criminal Justice Information Security)

Exhibit IV governs the requirements for Contractors with Access to Criminal Justice Information governed by the CJI Security Policy of the FBI.

1. **Definitions**

- 1.1 **Criminal Justice Information (CJI)** means data or information governed by the CJIS Security Policy.
- 1.2 **Criminal Justice Information Services (CJIS)** means the Criminal Justice Information Services, a division in the Federal Bureau of Investigation (FBI) that sets a minimum standard of security requirements to protect and safeguard CJI.
- 1.3 **CJIS Security Policy** means the Policy that governs the security of CJI. The CJIS Security Policy provides guidance for the creation, viewing, modification, transmission, dissemination, storage, and destruction of CJI. This Policy applies to every individual—contractor, private entity, noncriminal justice agency representative, or member of a criminal justice entity—with access to, or who operate in support of, criminal justice services and information.

2. **Obligations**

Contractor shall comply with the current version of the CJIS Security Policy, which may be amended from time to time by the CJIS Advisory Policy Board of the FBI. A link to the current FBI standards is available at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

EXHIBIT VI SOFTWARE LICENSES

DELL COMMERCIAL TERMS OF SALE

These Commercial Terms of Sale (“CTS”) apply to orders for hardware, software, and services by direct commercial and public sector purchasers and to commercial end-users who purchase through a reseller (“Customer”), unless Customer and Suppliers (defined below) have entered into a separate written agreement that applies to Customer’s orders for specific products or services, in which case, the separate written agreement governs Customer’s purchase and use of such specific products or services.

The term “Supplier(s)” means, as applicable:

EMC Corporation (“EMC”)
176 South Street
Hopkinton, Massachusetts 01748

and

Dell Marketing L.P. (“Dell”)
One Dell Way
Round Rock, Texas 78682
Legal Notices:
Dell_Legal_Notices@Dell.com

1. Subject Matter and Parts of CTS.

1.1 **Scope.** This CTS governs Customer’s procurement and Supplier’s provisioning of Products, Services and Third Party Products (if applicable) (collectively “Offerings”), for Customer’s own internal use.

1.2 **Products and Services.** “Products” are either: (i) Supplier-branded IT hardware products (“Equipment”) or (ii) Supplier-branded generally available software, whether microcode, firmware, operating systems or applications (“Software”). “Services” are: (a) Supplier’s standard service offerings for maintenance and support of Products (“Support Services”) and (b) consulting, deployment, implementation and any other services that are not SupportServices (“Professional Services”). “Third Party Products” means hardware, software, products, or services that are not “Dell” or “Dell EMC” branded. Products exclude Services and Third Party Products.

1.3 **Framework.** This CTS consists of the main body with the terms and conditions applicable to all Offerings that are in scope, as may be supplemented by additional schedules, containing terms applicable to all or only specific Offerings and shall form an integral

part of this CTS ("Schedule(s)"). This CTS does not establish a commitment of Customer to procure, nor an obligation of Supplier or Affiliate to supply, any Offerings unless the parties have agreed on an Order (as defined below).

- 1.4 **Affiliates.** Transactions under this CTS may also involve Dell Inc. or Dell Inc.'s direct or indirect subsidiaries ("Affiliates").

2. **Quoting and Ordering.**

- 2.1 **Process.** Customer or its Affiliates based in the same country as Customer may request a quote from Supplier or its Affiliate (depending on the Offerings purchased), either in the form of a written quotation or online via www.dell.com or any other online process ("Quote"). Quoted prices are effective until the expiration date of the Quote but may change due to shortages in materials or resources, increase in the cost of manufacturing, or other factors. Customer may order the Offerings quoted by ordering through an authorized reseller. Orders are subject to credit approval and are subject to acceptance by Supplier; unless Supplier has already otherwise accepted an order, shipment of the Offerings shall be deemed Supplier's acceptance of the order. An accepted order is hereinafter referred to as an "Order." Supplier may split an Order into separate transactions, each of which will form an Order. Orders may contain charges for shipping and handling. Orders are subject to availability and are cancellable only by Supplier except as expressly permitted in a Schedule. Supplier is not responsible for pricing, typographical or other errors in any offer and may cancel Orders affected by such errors. Customer may change or cancel an Order only as expressly permitted in a Quote or Schedule.

- 2.2 **Orders Submitted Through Reseller.** If Customer's purchase is made through a reseller, then clauses 2.1, 3, and 6 do not apply and all credit, invoicing, payment, returns, ordering, pricing and cancellation terms for the purchase will be as agreed between Customer and reseller.

- 2.3 **Incorporation by Reference.** Each Order which covers the procurement and sale of any Offering that is within the scope of a Schedule listing certain specific Offerings and signed under this CTS shall be deemed to incorporate by reference the terms of this CTS.

- 2.4 **Product and Service-Specific Terms.** Scope and details of Services and Product-specific terms are specified in the applicable standard service description that is attached to or referred in a Schedule or Quote. Such standard descriptions are from time to time referred to as "Service Description(s)", "Product Notices" or "Service Briefs." The version of the applicable document that is effective as of the date of the applicable Quote, shall be deemed incorporated into the Order. Scope and details of customized Professional Services not covered by such a standard description shall be documented in a mutually

agreed Contract Amendment and Statement of Work ("SOW").

- 2.5 **Order of Precedence.** This CTS including the documents referenced herein shall apply to the exclusion of all other general terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

Subject to the foregoing, in case of any conflict or inconsistency the following order of precedence shall apply:

- A. The terms of the Order, where either: (i) this CTS expressly provides for the parties to optionally deviate from the relevant provision of this CTS; or (ii) where the Order states that the parties wish to deviate from the terms of this CTS for the purpose of the individual transaction and the parties expressly accept the deviation;
- B. The terms of any Schedule to this CTS; and
- C. The main body of this CTS.

- 2.6 **Revision of Offerings.** Supplier may revise its Offerings, including after Customer places an Order but prior to Supplier's shipment or performance. As a result, Offerings Customer receives may differ from those ordered, as long as they still substantially meet or exceed the specifications as per the documentation of the originally ordered Offerings.

3. **Product Delivery.**

- 3.1 **Shipment.** Unless otherwise agreed, Supplier shall arrange for shipment of the ordered Products to the ship-to address indicated in the Order, through a common carrier designated by Supplier. Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means. Customer shall notify Supplier within 21 days of the invoice date if Customer believes any Product included in its Order is missing, wrong, or damaged, and shall ensure that the intended installation site meets the specifications as per the product documentation.

- 3.2 **Transfer of Risk and Title; Costs.** Risk of loss for Equipment and for physical media containing licensed Software transfers to Customer upon Delivery. Title to sold Equipment passes to Customer upon Delivery. "Delivery" for Equipment occurs when the Equipment is delivered to the ship-to address indicated in the Order; "Delivery" for Software occurs either when the physical media (or the Equipment on which it is installed) is delivered to the ship-to address indicated in the Order, or the date Supplier notifies Customer that Software is available for electronic download. Unless otherwise agreed, cost of transit insurance on behalf of Customer shall be included in the total price stated on the Quote.

- 3.3 **Acceptance.** All Products and Third Party Products will be deemed to be accepted upon Delivery. Notwithstanding such acceptance, Customer retains all rights and remedies under the warranty terms stated below. Customer may only return Products to Supplier that are permitted to be returned pursuant to the return policy at www.dell.com/returnspolicy.

4. **Software Licenses.**

Customer's rights to use the Software delivered by Supplier are governed by the terms of the applicable end-user license agreement. Supplier will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment.

5. **Services.**

5.1 **SUPPORT SERVICES.**

- A. **Scope and Term.** Supplier shall provide Support Services in accordance with the applicable Service Description or Product Notice, for the (initial or renewal) period agreed in the applicable Order. Unless otherwise agreed therein, the initial Support Services procured together with the purchase of a Product start on the commencement date of the applicable warranty period (as specified in clause 7).
- B. **Support Availability and Release Cycles.** Availability of Support Services is governed by Supplier's "End-of-Service-Life" policies, to be made available to Customer upon request. Subject to such policies, Support Services for Software apply to the current and the immediately prior release of the Software.
- C. **Limitations.** Support Services do not cover any of the following: (i) problems that are excluded from warranty coverage according to clause 7.4, below; (ii) problems that cannot be reproduced at Supplier's facility or via remote access to Customer's facility; (iii) onsite activities for Equipment that is located outside of the applicable service area (unless otherwise provided in a Service Description); (iv) providing media replacement, operating supplies, cosmetic accessories or parts such as frames, and cover or support on those items; or (v) repairing damage or defects in Equipment that are purely cosmetic and do not affect device functionality.
- D. **Maintenance Tools and Spare Parts.** Supplier may, at its discretion, store tools and spare parts used by Supplier to perform diagnostic or remedial activities in connection with Products at the Customer's site or on Customer's systems, and Customer agrees that such are for use only by Supplier authorized personnel and further authorizes Supplier to

remove and/or disable them when no longer needed by Supplier to provide its Services.

- E. **Replacements.** All replaced Equipment or components thereof shall be returned to Supplier and become the property of Supplier upon receipt of the replaced Equipment or components at the specified Supplier facility unless specifically agreed otherwise in an Order. If Customer does not return a replaced component or Equipment within thirty (30) days after receipt of Supplier's request, then Customer must pay Supplier at the then-current spare parts list price for the Equipment or portions that Customer has failed to return. If Supplier determines that a component of a defective Equipment product is "customer- replaceable", i.e. one that is easily disconnected and reconnected, or if the Supplier determines that the Equipment should be replaced as a whole, Supplier reserves the right to send Customer a component or whole replacement Equipment for exchange.
- F. **Data Responsibility.** Supplier shall not access or use any Customer production data stored on the Products, unless Customer has expressly authorized Supplier to do so. Unless a data deletion service is expressly ordered from Supplier, Customer is responsible for removing all information and data stored on replaced parts, or on any other items or Product before it is returned to Supplier.
- G. **Customer-Initiated Changes.** If the Product is covered by Support Services and Customer intends: (i) to relocate Equipment to a different installation site (where applicable to the Product); (ii) to change the hardware configuration on its own; or (iii) to deny the activation or to disable remote support features of a Product, Customer shall notify Supplier in advance. Where any of such action limits Supplier's ability to provide Support Services for the affected Product or increases the Supplier's cost of providing Support Services, Supplier is entitled to make the continuation of Support Services dependent on Customer paying a reasonable adjustment of the ongoing fees and a reasonable charge for any re-certification services Supplier reasonably considers necessary for continued support; agreed upon proactive support capabilities, response times, or other service levels may no longer apply.

5.2 **Professional Services.**

- A. **Scope of Services.** Supplier shall provide Professional Services including any Deliverables (as defined below) in accordance with the applicable Service Description, SOW or other agreed upon documentation containing the specifics of such services ("Service Specification"). Professional Services are provided as a separate and independent service even if mentioned together with the sale or licensing of Products by Supplier in the same Order. Supplier is not providing legal or regulatory advice in any Professional Services.
- B. GRANT OF LICENSE RIGHTS IN DELIVERABLES.

- (1) “Deliverables” means any reports, analyses, scripts, code, or other work results that Supplier delivers to Customer within the framework of fulfilling obligations under a Service Specification. “Proprietary Rights” mean all patents, copyrights, trademarks, trade secrets, or other intellectual property rights of a party.
 - (2) Subject to Customer’s compliance with the terms of this CTS and any applicable Service Specification, Customer’s payment of applicable amounts due, and Supplier’s Proprietary Rights in any underlying intellectual property incorporated into any Deliverables or used by Supplier to perform Professional Services, Supplier grants Customer a non-exclusive, non-transferable, revocable (in case of non-payment, or any breach of this CTS or any applicable Service Specification) license to use (without the right to sublicense) the Deliverables provided by Supplier for Customer’s internal business purposes, only and solely in accordance with the applicable Service Specification and subject to this CTS. Customer may authorize its service providers to use the Deliverables, but solely on Customer’s behalf, solely for Customer’s internal business purposes, and Customer shall be responsible for service provider’s compliance with these restrictions.
 - (3) Supplier reserves for itself all Proprietary Rights that it has not expressly granted to Customer herein. The license granted in this clause 5.2B. does not apply to: (i) any Products; or (ii) items licensed or otherwise provided under a separate agreement. Supplier is not limited in developing, using, or marketing services or products that are similar to the Deliverables or Professional Services provided hereunder, any Service Specification, or, subject to Supplier’s confidentiality obligations to Customer, in using the Deliverables or performing similar Professional Services for any other projects.
- C. **Customer Furnished Materials.** Customer retains its Proprietary Rights in materials it furnishes to Supplier for use in connection with the performance of Professional Services. Customer grants Supplier a non-exclusive, non-transferable right, under Customer’s Proprietary Rights, to use the Customer-provided materials solely for the benefit of Customer in fulfilling Supplier’s obligations under this CTS.
- D. **Responsibility for Personnel.** Supplier is solely responsible for personnel placement as well as for all other human resource issues (e.g. vacation) concerning its personnel.
- 5.3 **Customer Responsibilities.** In connection with Support Services or Professional Services (if applicable), at no charge to Supplier, Customer shall: (i) provide Supplier

personnel with timely access to appropriate facilities, space, power, documentation, files, data, information, additional software (if needed); (ii) use skilled and authorized Customer personnel to assist and cooperate with Supplier in the provision of the Services as reasonably requested by Supplier; (iii) be responsible for physical and network security and all conditions in its business necessary for due performance of Services; (iv) allow Supplier remote and onsite access to the Products and Customer's infrastructure environment, as required; and (v) where applicable, promptly notify Supplier when Products fail and provide Supplier with sufficient details of the failure such that the failure can be reproduced by Supplier. For Professional Services, details may be set forth in the Service Specification.

5.4 Reserved.

6. **Invoicing; Payment Terms and Taxes.**

6.1 Reserved.

6.2 Reserved.

6.3 Reserved.

7. **Warranty.**

7.1 **Equipment Warranty.** Supplier warrants that Equipment, under normal usage and with regular recommended service, will be free from material defects in material and workmanship, and that Equipment will perform substantially in accordance with the corresponding standard documentation issued by Supplier for the applicable Equipment. Unless provided otherwise in a Schedule, additional terms governing the limited warranties for Equipment are found at www.dell.com/warrantyterms or in the applicable documentation or Product Notice for the specific Equipment. Supplier's entire liability for a breach of this warranty shall be for Supplier, at its option and cost, to repair or to replace the affected Equipment, and, if Supplier is unable to effect such within a reasonable time, then Supplier will refund the amount Customer paid for the affected Equipment as depreciated on a straight-line basis over a 5 year period, upon return of such Equipment to Supplier.

7.2 **Software Warranty.** The following terms apply to the specific Software ("Warranted Software") listed in the table located at www.dell.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/h4276-emc-prod-warranty-maint-table.pdf (the "Software Warranty Table"). Supplier warrants that Warranted Software will substantially conform in all material respects to its then-current documentation during the applicable warranty

period specified in the Software Warranty Table (the “Software Warranty Period”). Any breach of this warranty must be reported to Supplier during the Software Warranty Period. Customer’s sole and exclusive remedy and Supplier’s entire liability for a breach of this warranty is for Supplier, at its sole discretion, to either use commercially reasonable efforts to remedy the non-conformance or to terminate the license for the affected Software and provide a pro-rata refund of the license fees received by Supplier for such Software.

- 7.3 **Services Warranty.** Supplier will perform Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Supplier of any failure to so perform within 10 days after the date on which such failure first occurs. In such case, Supplier will use reasonable efforts to correct such failure within a reasonable period of time. If, after reasonable efforts, Supplier is not able to correct such deficiencies for reasons for which Supplier is responsible, then Customer may terminate the affected Services for cause by providing written notice to Supplier.
- 7.4 **Limitations.** The warranties set forth in this clause 7 do not cover problems that arise from: (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond Supplier’s control; (iii) installation, operation or use not in accordance with Supplier’s instructions and the applicable documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than Supplier personnel or (vi) causes attributable to normal wear and tear. Supplier has no obligation for: (1) Software installed or used beyond the licensed use, or (2) Product whose original identification marks have been altered or removed.
- 7.5 **WARRANTY DISCLAIMER.** OTHER THAN THE WARRANTIES SET FORTH IN THIS CLAUSE 7 AND THE SCHEDULES, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER AND SUPPLIER AFFILIATES: (I) MAKE NO OTHER EXPRESS WARRANTIES; (II) DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT; AND (III) DISCLAIM ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.
8. **Limitation of Liability.**
- 8.1 **Limitations on Damages.** The limitations, exclusions and disclaimers stated below apply to all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) related to or arising out of the CTS or any Quote or Order (“Dispute”). The terms of this clause are agreed allocations of risk constituting part of the consideration for Supplier’s and its Affiliates’ sale of Products and Services to Customer and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the

liabilities.

- A. **Limitation on Direct Damages.** Except for Customer's obligations to pay for Offerings, Customer's violation of the restrictions on use of Products and Services or Supplier's or its Affiliates' intellectual property rights, Customer's total liability arising out of any Dispute or any matter under this CTS, is limited to the amount Customer paid to Supplier during the 12 months before the date that the matter or Dispute arose for the Product, Services or both that are the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Supplier (and its suppliers) shall have no liability for any direct damages resulting from Customer's use or attempted use of Third Party Software, Free Software or Development Tools, all defined in the EULA described in clause 4 above, or Third Party Products.
- B. **Disclaimer of Certain Other Damages.** Except for Customer's payment obligations and violation of Supplier's or its Affiliates' intellectual property rights, neither Supplier (and its suppliers) nor Customer has liability to the other for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.
- 8.2 **Prevention and Mitigation.** Customer is solely responsible for its data. Customer shall implement IT architecture and processes enabling Customer to prevent and mitigate damages in line with the criticality of the systems and data for Customer's business and its data protection requirements, including a business recovery plan. In that regard, Customer shall: (i) provide for a backup process on a regular (at least daily) basis and backup relevant data before Supplier performs any remedial, upgrade or other works on Customer's IT systems; (ii) monitor the availability and performance of its IT environment during the performance of Services; and (iii) promptly react to messages and alerts received from Supplier or through notification features of the Products and immediately report any identified issue to Supplier. To the extent that Supplier has any liability for data loss, Supplier shall only be liable for the cost of commercially reasonable and customary efforts to recover the lost data from Customer's last available backup.
- 8.3 **Limitation Period.** Except as stated in this clause, all claims must be made within the period specified by applicable law
9. **Third Party Products.**

Supplier may offer to supply Third Party Products that are provided by a third party manufacturer/supplier, e. g. under Supplier's "Dell EMC Select" program, Supplier's "Brokerage" program or Supplier's Software & Peripherals (S&P) program, and may include

offerings from Supplier Affiliates using different brands other than “Dell” or “Dell EMC”. Notwithstanding any other provisions herein, such Third Party Products are subject to the standard license, services, warranty, indemnity and support terms of the third party manufacturer/supplier (or an applicable direct agreement between Customer and such manufacturer/supplier), to which Customer shall adhere. Even if support fees are invoiced through Supplier, such Third Party Products are not supported by Supplier and Customer shall contact such third party directly for support. Any warranty, damages or indemnity claims against Supplier in relation to such Third Party Products are expressly excluded. References to warranty and support information for Dell EMC Select products is currently available through www.dell.com/offeringspecificterms.

10. Confidentiality.

10.1 Scope. “Confidential Information” shall mean any technical data or know-how furnished in connection with the scope of this CTS, whether in written, oral, electronic, website-based, or other form, by a Customer or a Customer Affiliate to Supplier or a Supplier Affiliate or vice versa and that: (i) is marked, accompanied or supported by documents clearly and conspicuously designating such documents as “confidential”, “internal use” or the equivalent; (ii) is identified by the discloser as confidential before, during or promptly after the presentation or communication; or (iii) should reasonably be known by the recipient to be confidential. Confidential Information does not include information that is: (a) rightfully in the receiving party’s possession without prior obligation of confidentiality from the disclosing party; (b) a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other party); (c) rightfully furnished to the receiver by a third party without confidentiality restriction; or (d) independently developed by the receiver or its Affiliates without reference to the discloser’s Confidential Information.

10.2 Protection. Each party shall ensure that, where it or one of its Affiliates is the receiver of Confidential Information hereunder, the receiver shall (a) use Confidential Information of the discloser only for the purposes of exercising rights or performing obligations in connection with this CTS or any Order hereunder; and (b) protect from disclosure to any third parties any Confidential Information disclosed by the discloser, both for a period commencing upon the date of disclosure until 3 years thereafter. Subject to the terms of this Section 10, the foregoing obligations shall never expire in relation to technical information about a discloser’s products and services or any information about possible unreleased products or services, and shall survive any termination or expiration of this CTS.

10.3 Exceptions. Notwithstanding the foregoing, either party and its Affiliates may disclose Confidential Information (1) to an Affiliate, or to a subcontractor used by Supplier to provide Services under this Agreement, as long as the Affiliate or subcontractor has a need-to-know and complies with the foregoing; (2) to either party’s directors, officers,

employees, and professional advisors and those of its Affiliates, and (3) if required by law or regulatory authorities provided the receiver has given the discloser prompt notice. For the purposes of this clause 10.3, "Affiliates" of Supplier include other members of Dell Technologies group.

11. Term and Termination of this CTS.

This CTS is effective upon the earlier of an Order or Customer's acceptance of the CTS and continues until it is terminated in accordance with this clause. Either party may terminate this CTS for material breach by the other party if such other party has failed to cure the breach within a reasonable grace period of no less than 30 days as set forth by the other party in writing. A termination of this CTS shall not affect any previously placed Orders.

12. General.

12.1 Governing Law; Jurisdiction. The CTS and any Dispute is governed by the laws of the State of Michigan (excluding the conflicts of law rules) and the federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods does not apply. To the extent permitted by law, the state and federal courts located in Michigan will have exclusive jurisdiction for any Disputes. Customer and Supplier agree to submit to the personal jurisdiction of the applicable state and federal courts located within Michigan, and agree to waive any and all objections to the exercise of jurisdiction over the parties by those courts and to venue in those courts.

12.2 Trade Compliance. Customer's purchase of Offerings and access to related technology (collectively, the "Materials") are intended for its own use, not for resale, export, re-export, or transfer. Customer is subject to and responsible for compliance with the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use, and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States, European Union or other applicable jurisdictions.

12.3 Customer Responsibility. Customer agrees that it will obtain all necessary rights, permissions and consents associated with: (a) technology or data (including personal data) that Customer and its Affiliates provide to Supplier or its Affiliates, and (b) non-

Supplier software or other components that Customer and its Affiliates direct or request that Supplier or its Affiliates use with, install, or integrate as part of the Supplier's Offerings. Customer is solely responsible for reviewing data that will be provided to or accessed by Supplier in the provision of the Offerings to ensure that it does not contain: (i) data that is classified, ITAR (International Traffic in Arms Regulations) related data, or both; or (ii) articles, services, and related technical data designated as defense articles and defense services.

- 12.4 **Encryption.** Customer certifies that all items (including hardware, software, technology and other materials) it provides to Supplier for any reason that contain or enable encryption functions either (a) satisfy the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms (Wassenaar Arrangement) and Dual-Use Goods and Technologies and Category 5, Part 2 of the U.S. Commerce Control List (CCL) or (b) employ key length of 56-bit or less symmetric, 512-bit asymmetric or less, and 112-bit or less elliptic curve or (c) are otherwise not subject to the controls of Category 5, Part 2 of the Wassenaar Arrangement and Category 5, Part 2 of the CCL. Supplier is not responsible for determining whether any third party product to be used in the products and services satisfies regulatory requirements of the country to which such products or services are to be delivered or performed. Supplier shall not be obligated to provide any product or service where the product or service is prohibited by law or does not satisfy the local regulatory requirements.
- 12.5 **U.S. Government Restricted Rights.** The software and documentation provided with the Products and Services are "commercial items" as that term is defined at 48 C.F.R. 12.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software and documentation with only those rights set forth herein. Contractor/manufacture of Dell-branded Software and Dell-branded Products is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.
- 12.6 **Entire Agreement.** This CTS, the Schedules and each Order hereunder comprise the complete statement of the agreement of the parties regarding the subject matter thereof and may be modified only by written agreement. Pre-printed terms on any Order or any term or condition on a Customer form, have no legal effect and do not modify or supplement the CTS, even if Supplier does not expressly object to those terms when accepting a Customer Order. The Schedule(s) and information which are incorporated by reference (including reference to information contained in a URL or policy) form an integral part of this CTS.
- 12.7 **Force Majeure.** Neither party shall be liable to the other for any delay or failure to

perform any of its obligations (other than for the payment of fees) caused by Force Majeure. If such delay or failure lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, the relevant Order by giving written notice to the delayed party. "Force Majeure" refers to circumstances beyond a party's reasonable control including, without limitation, act of God, war, riot, civil commotion, terrorist acts, malicious damage, governmental or regulatory actions, accident, breakdown of plant or machinery, local or national emergency, explosions, fire, natural disasters, severe weather or other catastrophes, epidemics/pandemics, general import/export/customs process problems affecting supplies to Supplier or to Customer, shortages in materials, failure of a utility service or transport network, embargo, strike, lock out or other industrial dispute (whether involving Supplier's workforce or any other party), or default of suppliers or subcontractors due to any of the preceding events.

- 12.8 **Assignment and Subcontracting.** Neither party shall assign, transfer or novate this CTS, any Order, or any right or obligation thereunder or delegate any performance without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing: (i) Supplier may use Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that the relevant party to the Order shall remain responsible for the performance thereof; and (ii) either party may assign rights to payments arising under any Order without consent of the other party.
- 12.9 **Independent Contractors.** The parties are independent contractors for all purposes under this CTS and cannot obligate any other party without prior written approval. The parties do not intend anything in this CTS to allow any party to act as an agent or representative of a party, or the parties to act as joint venturers or partners for any purpose. No party is responsible for the acts or omissions of any other.
- 12.10 **Third Party Rights.** There are no third party beneficiaries to this CTS or any Order under any laws.
- 12.11 **Waiver and Severability.** Failure to enforce a provision of this CTS will not constitute a waiver of that or any other provision of this CTS. If any part of this CTS or an Order is held unenforceable, the validity of the remaining provisions shall not be affected.
- 12.12 **Notices.** The parties will provide all notices under this CTS in writing. Customer must provide notices to Supplier at the Dell email address on the first page of the CTS.

DELL End User License Agreement

This End User License Agreement (“EULA”) is between the individual consumer or business entity that will use the Software (“You”) and the applicable entity identified in the “Licensor Table” located at www.dell.com/swlicensortable (“Licensor”).

This EULA governs Your use of: (a) the object code version of Dell branded software that is preinstalled on Dell hardware or otherwise provided to You pursuant to a purchase contract, quote, order form, invoice or online procurement process (each, an “Order”); (b) associated software license keys, if any (“License Keys”); (c) updates to such software (“Updates”); (d) the documentation for such software; and (e) all copies of the foregoing (collectively, “Software”).

If You are a business entity and You purchase Software from a third party (“Reseller”) who sublicenses the Software to You under the terms of an agreement between You and such Reseller (a “Sublicense Agreement”), then the terms of Your Sublicense Agreement with the Reseller shall govern Your use of the Software and not this EULA. Resellers may only grant rights, and must pass through conditions, consistent with this EULA. Thus, even though Your Sublicense Agreement is between you and the Reseller, by installing or using the Software, You acknowledge and agree that: (a) any license rights in the Sublicense Agreement that are greater than the license rights in this EULA shall not apply; (b) any license conditions in this EULA that are not contained in the Sublicense Agreement apply to You; (c) the limitations of liability set forth in this EULA will apply in favor of Licensor, its affiliates and suppliers despite the existence of a Sublicense Agreement; and (d) Licensor is a third-party beneficiary of the Sublicense Agreement and is entitled to exercise and enforce all of the Reseller’s rights and benefits under that Sublicense Agreement.

If You purchase Software as an individual consumer, nothing in this EULA affects your statutory rights if the laws of your state or country do not permit it to do so.

1. **License Grant.**

- 1.1. **Right to Use.** Subject to and in consideration of your full compliance with the terms and conditions of this EULA, Licensor grants to You a personal, non- exclusive license to use the Software during the period stated in the applicable Order (if no period is specified, You may use the Software perpetually). If You are an individual consumer, this license grant allows You to use the Software in connection with Your own personal use. If You are a business entity, this license grant allows You to use the Software in connection with the internal business operations of Your entity. In addition, You may make a reasonable number of copies of the Software solely as needed for backup or archival purposes. Additional license terms for certain Software may be included in the Offering Specific Terms Table located at www.dell.com/offeringspecifictterms (“OST Table”), and additional terms for Software that is licensed to You for a limited time (“Subscription Software”) are located at www.dell.com/subscription_terms (“Subscription Terms”).

- 1.2. **Third Party Use.** If You are a business entity, You may allow Your contractors (each, a “Permitted Third Party”) to use the Software solely for the purpose of providing services to You, provided that such use is in compliance with this EULA. You are liable for any breach of this EULA by any Permitted Third Party.
- 1.3. **Rights Reserved.** The Software is licensed and not sold. Except for the license expressly granted in this EULA, Licensor, on behalf of itself and its affiliates and suppliers, retains all rights in and to the Software and in all related materials (“Works”). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of Works other than as expressly set forth herein is strictly prohibited.
- 1.4. **Ownership.** Licensor, on behalf of itself and its affiliates, retains ownership of the Works and all related intellectual property rights. If Software is provided to You on removable media (e.g., CD, DVD or USB drive), You may own the media on which the Software is recorded.
2. **License Conditions.**
 - 2.1. You and Your Permitted Third Parties must do the following:
 - A. Run the Software only on the hardware for which it was intended to operate, when applicable;
 - B. Use License Keys (if applicable) only from Licensor or an authorized Dell License Key provider;
 - C. Treat the Software as Dell confidential information;
 - D. Use the Software only on as many computers or devices that You purchased, in such configurations permitted by Dell or Licensor, and/or in accordance with the applicable unit of measure, each as may be specified on Your Order. For Software licensed via a unit of measure, the terms and descriptions of each unit of measure are located at www.dellemc.com/UOM_terms (“UOM Terms”);
 - E. Abide by the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Under these laws, the Software must not be used, sold, leased, exported, imported, re-exported or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities,

including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. You represent and warrant that You are not the subject or target of, and that You are not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of economic sanctions of the United States, European Union or other applicable jurisdictions; and

- F. Comply with all Third Party Terms (as defined in Section 5 below).
- 2.2. Except as otherwise permitted by this EULA or by mandatory law (meaning a law that the parties cannot change by contract), You must not, and must not allow Your Permitted Third Parties, to do the following:
- A. Modify or remove any proprietary notices or markings on or in the Software;
 - B. Transfer License Keys to any other person or entity;
 - C. Download Updates from Licensor or an authorized provider unless You have a valid support agreement;
 - D. Install Updates on Enterprise Products (e.g., server, networking, storage, integrated solutions, and data protection appliances) that have gone end of service life unless Licensor otherwise agrees in writing;
 - E. Install and operate counterfeit versions of Software (i.e. software provided by anyone other than Dell or an authorized representative of Dell) on Dell hardware;
 - F. Violate or circumvent any technological use restrictions in the Software;
 - G. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Software;
 - H. Use any trademarks or service marks of Licensor, its affiliates or suppliers;
 - I. Provide access to the Software or allow use by any third party, other than Permitted Third Parties, without Licensor's prior written consent;
 - J. Copy, republish, upload, post or transmit the Software in any way;
 - K. Modify or create derivative works based upon the Software, or decompile,

disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;

- L. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Software;
- M. Use the Software on a service bureau, rental or managed services basis;
- N. Create or permit others to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server, wireless or Internet-based device;
- O. Use the Software to create a competitive offering;
- P. Use the Software to create other software, products or technologies unless the Software contains Development Tools as described in Section 7;
- Q. Share or publish the results of any benchmarking of the Software without Dell's prior written consent;
- R. Use the Software for high risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any other device or system in which function or malfunction of the Software could result in death, personal injury or physical or environmental damage;
- S. Use the Software for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or support of missile projects, or chemical or biological weapons; and
- T. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Dell's prior written consent, unless You are transferring the Software in accordance with the Transferability Section 3 below. Even if Dell consents to an assignment, You remain responsible for all obligations under this EULA that You incurred prior to the effective date of the assignment.

3. **Transferability.** If You are an individual consumer, You may transfer the Software on a permanent basis as part of the sale or transfer of the hardware system on which the Software is loaded, provided that You retain no copies of any version of the Software. If You are a business entity, You may not transfer the Software to another person or

entity without the express written permission of Dell, unless allowed by applicable law stating that transfer may not be restricted (note that a transfer fee may be charged by Dell).

4. **Compliance Verification.** If You are a business entity, You must: (a) maintain and use systems and procedures that allow You to accurately track Your use of the Software; (b) certify to Dell in writing, at Dell's request, that Your use of Software fully complies with this EULA, indicating the number of Software licenses deployed at that time; and (c) cooperate fully and timely with Dell and its auditors if Dell notifies You that it will conduct an audit to confirm Your compliance with this EULA. Any such audit will be conducted during normal business hours. If Dell determines that You have over-deployed Software, You agree to immediately purchase licenses at the then-current list price to bring Your use into compliance. If You over-deployed Software by 5% or more, then You agree to pay the total cost of the audit, in addition to any other liabilities You may have.
5. **Third Party Software.** "Third Party Software" is software, including open source software, that is contained in or provided with the Software and is licensed by a third party under its own terms of use ("Third Party Terms"). Third Party Software is governed solely by the applicable Third Party Terms and not by this EULA. Third Party Terms may be provided with the Third Party Software or may be included in the OST Table. For certain open source software, the applicable Third Party Terms may entitle You to obtain the corresponding source files. You may find corresponding source files for such open source software at //opensource.dell.com/ or in the "About" or "Read Me" file of Software, or other locations that Licensor may specify.
6. **Free Software.** "Free Software" means Software that is provided to You without additional charge (e.g., scripts that enable customer installation; code that enables You to monitor Your use of Dell products; etc.). You may only use Free Software on or with equipment or in the operating environments for which Dell has designed that Free Software to operate. You may not transfer Free Software to anyone else.
7. **Development Tools.** If the Software includes development tools, such as scripting tools, APIs or sample scripts (collectively "Development Tools"), and unless there is a separate agreement between You and Dell or Licensor for the Development Tools, You may use such Development Tools to create new scripts and code for the purpose of customizing Your use of the Software (within the parameters set forth in this EULA and in the Development Tools themselves) and for no other purpose.
8. **Evaluation Software.** This EULA does not license use of Software for evaluation purposes ("Evaluation Software") except to the extent these terms may be invoked by the separate license terms and conditions accompanying that Evaluation Software.

9. **Support Services Not Included.** If You purchase maintenance and support for Software, such services are identified in Your Order and will be provided under a separate services agreement.
10. **Termination.** For Subscription Software, this EULA automatically terminates at the end of Your subscription period unless You renew Your rights. Licensor may terminate this EULA if You or a Permitted Third Party commits a material breach of this EULA and fails to cure such breach within thirty (30) days following Your receipt of notice of the breach from Dell. This right to terminate applies accordingly if Dell or the Reseller from whom You made Your purchase does not receive timely payment for the licenses to the Software or for the hardware on which the Software is loaded, if any. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Software and return or destroy all copies of the Software. Except as otherwise agreed by Dell, You will not get a refund from Dell if this EULA is terminated for Your material breach. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination, as well as obligations for payment.
11. **Warranty Disclaimer.** Under this EULA, Licensor provides neither any warranties for the Software nor does it provide support for the Software. Your rights under any warranties and any support entitlements for Software acquired for a fee are solely between You and the Reseller or Dell entity from whom You procured the Software and related support, and are defined under the commercial terms agreed between You and such selling entity. Accordingly, except as otherwise offered by Dell, the Software is provided by Licensor under this EULA "As Is" without any warranties or conditions. To the maximum extent permitted by applicable law, Licensor, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to the Software; (b) disclaims all implied warranties and conditions related to the Software, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Licensor does not warrant uninterrupted or error-free operation of the Software. This Section does not affect or modify any of the statutory warranty rights that are available to consumers.
12. **Limitation of Liability.**
 - 12.1. **Limitations on Damages.** The limitations, exclusions and disclaimers set forth in a Pre-Existing Agreement or Dell Terms of Sale that applies your Order (in each case, the "Order Terms") shall apply to all disputes, claims or controversies (whether in contract, tort or otherwise) between You and Licensor or Dell related to or arising out of: (a) this EULA; (b) the breach, termination or validity of this EULA; or (c) any Orders

(each, a “Dispute”). In the absence of applicable Order Terms, the terms set forth in this Section shall apply to all Disputes.

The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor’s licensing of Software to You and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities. If applicable law prohibits any portion of the limits on liability stated below, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law.

A. Limitation on Direct Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor’s or Dell’s intellectual property rights, the total liability of You and Licensor (including Licensor’s affiliates and suppliers) arising out of any Dispute is limited to the amount You paid for the Software that is the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Licensor and its affiliates have no liability for any direct damages resulting from Your use or attempted use of Third Party Software, Free Software or Development Tools.

B. Disclaimer of Certain Other Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor’s or Dell’s intellectual property rights, neither You nor Licensor (including Licensor’s affiliates and suppliers) shall have any liability under this EULA for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

12.2. Regular Backups. You are solely responsible for Your data. You must back up Your data before Licensor or a third party performs any remedial, upgrade or other work on Your production systems. You acknowledge that it is a best practice to have more than one back up copy of Your data. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from Your last available back up.

12.3. Limitation Period. Except as stated in this Section, all claims must be made within the period specified by applicable law.

13. Additional Terms.

13.1. Notices. The parties will provide all notices under this EULA in writing. Unless provided otherwise in an Order, You must provide notices to the local Dell entity in Your Order,

or, if Your Order is not with a Dell entity, by e-mail to Dell_Legal_Notices@dell.com.

- 13.2. **Waiver and Severability.** Failure to enforce a provision of this EULA will not constitute a waiver of that or any other provision of this EULA. If a court of competent jurisdiction determines that any part of this EULA or document that incorporates this EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.
- 13.3. **Modifications.** This EULA may only be modified in writing signed by both parties
- 13.4. **Governing Law and Jurisdiction.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan, excluding Michigan's conflict of law principles. Except as otherwise required by law or court rule, any action or claim brought to enforce, interpret, or arising under or related to this Agreement shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
- 13.5. **Reserved.**
- 13.6. **Third Party Rights.** Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.
- 13.7. **Entire Agreement.** You acknowledge that You have read this EULA, that You understand it, that You agree to be bound by its terms, and that this EULA, along with the Order Terms into which this EULA may be incorporated (as applicable), is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Software. All content referenced in this EULA by hyperlink is incorporated into this EULA in its entirety and is available to You in hardcopy form upon Your request. The pre-printed terms of Your purchase order or any other document that is not issued or signed by Licensor or Dell do not apply to Software. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.

**VMWARE END USER
LICENSE AGREEMENT**

THE TERMS OF THIS END USER LICENSE AGREEMENT (“EULA”) GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

BY DOWNLOADING, DEPLOYING, OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, DEPLOY, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO US OR THE VMWARE CHANNEL PARTNER FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS OF ITS ACQUISITION AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

EVALUATION LICENSE. If you license the Software for evaluation purposes (an “Evaluation License”), your use of the Software is only permitted for a period of thirty (30) days (unless we specify otherwise), and you may not use the Software with production data. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided “AS IS” without indemnification, support or warranty of any kind, express or implied.

1. LICENSE GRANT.

- 1.1. **General License Grant.** We grant you a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)) license to deploy the Software within the Territory and to use the Software and the Documentation during the term of the license, solely for your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise set forth in the Order, licenses granted to you will be for use of object code only and will commence on Delivery.
- 1.2. **Users and Third-Party Agents.** Under the License granted to you in Section 1.1 (General License Grant), you may permit your Users to use the Software, and you may permit Third-Party Agents to deploy and use the Software on your behalf for the sole purpose of delivering services to you. You will be responsible for your Users’ and Third-Party Agents’ compliance with this EULA, and any breach of this EULA by a User or Third-Party Agent will be deemed to be a breach by you.
- 1.3. **Copying Permitted.** You may copy the Software and Documentation as necessary to deploy and use the number of copies licensed, but otherwise for archival purposes only.
- 1.4. **Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or distribute the results of the studies to third parties if we have reviewed and approved of the methodology, assumptions, and other parameters of the study prior to publication and distribution. Please contact us at benchmark@vmware.com to request review and approval.
- 1.5. **Services for Affiliates.** You may use the Software to deliver IT services to your Affiliates, provided that those Affiliates may not directly use the Software.

- 1.6. **Open Source Software.** Open Source Software is licensed to you under the OSS's own applicable license terms, which can be found in either the open_source_licenses.txt file accompanying the Software, the Documentation, or as applicable the corresponding Source Files(as defined below) for the OSS available at www.vmware.com/download/open_source.html. These OSS license terms are consistent with the license granted in Section 1 (License Grant) and may contain additional rights benefiting you. The OSS license terms take precedence over this EULA to the extent that this EULA imposes greater restrictions on you than the applicable OSS license terms. To the extent the license for any Open Source Software requires us to make available to you the corresponding source code and/or modifications (the "**Source Files**"), you may obtain a copy of the applicable Source Files from our website at www.vmware.com/download/open_source.html or by sending a written request, with your name and address, to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date you acquired the Software.

2. **RESTRICTIONS; OWNERSHIP.**

- 2.1. **License Restrictions.** Without our prior written consent, you must not, and must not allow any third party to: (a) use the Software in an application services provider, service bureau, hosted IT services, or similar capacity for third parties, except as specified in Section 1.5 (Services for Affiliates); (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of the Software done by you or on your behalf, except as specified in Section 1.4 (Benchmarking); (c) make available the Software in any form to any third parties, except as specified in Section 1.2 (Users and Third-Party Agents); (d) transfer or sublicense the Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use the Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in the Product Guide and/or the applicable Order; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 2.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of the Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.
- 2.2. **Decompilation.** Notwithstanding Section 2.1, you may decompile the Software to the extent the laws of the Territory give you the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, (a) you must first request that information from us, (b) you must provide all reasonably requested information to allow us to assess your claim, and (c) we may, in our discretion, provide that interoperability information to you, impose reasonable conditions (including a reasonable fee) on that use of the Software, or offer to provide alternatives to reduce any potential adverse impact on our proprietary rights in the Software.

- 2.3. **Ownership.** The Software and Documentation (including all copies and portions), all improvements, enhancements, modifications and derivative works of the Software or Documentation, and all Intellectual Property Rights in the Software and Documentation, are and will remain the sole and exclusive property of VMware and its licensors. Your rights to deploy and use the Software and Documentation are limited to those expressly granted in this EULA and any applicable Order. No other rights are implied with respect to the Software, Documentation, or any related Intellectual Property Rights. You are not authorized to use (and must not permit any third party to use) the Software or Documentation except as expressly authorized by this EULA or the applicable Order. We reserve all rights not expressly granted to you. We do not transfer any ownership rights in any Software or Documentation.
- 2.4. **Guest Operating Systems.** Some Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that you are responsible for obtaining and complying with any licenses necessary to operate any third-party software.
3. **ORDER.** Your Order is subject to this EULA. No Orders are binding on us until we accept them. Orders for Software are deemed accepted upon Delivery of the Software included in the Order. Purchase orders issued to us do not have to be signed by you to be valid and enforceable. All Orders are non-refundable and non-cancellable except as expressly provided in this EULA. Any refunds to which you are entitled under this EULA will be remitted to you or to the VMware channel partner from which you purchased your Software license.
4. **RECORDS AND AUDIT.** You must maintain accurate records of your use of the Software sufficient to show compliance with the terms of this EULA. We have the right to audit those records and your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable prior notice and will not unreasonably interfere with your business activities. We may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You must reasonably cooperate with us and any third-party auditor and you must, without prejudice to our other rights, address any non-compliance identified by the audit by paying additional fees. You must reimburse us for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by you for the period audited, or that you have materially failed to maintain accurate records of Software use.
5. **SUPPORT SERVICES.** Support and subscription services for the Software (“**Support Services**”) are provided pursuant to the Support Services Terms and are not subject to this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software unless you separately purchase Support Services or they are included with your purchase of a license to the Software as provided in the Product Guide.
6. **WARRANTIES.**

- 6.1. **Software Warranty: Duration and Remedy.** We warrant that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery (“**Warranty Period**”), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than us or our authorized representative. We will, at our own expense and as our sole obligation and your exclusive remedy for any breach of this warranty, either replace the Software or correct any reproducible error in the Software reported by you in writing during the Warranty Period. If we determine that we are unable to correct the error or replace the Software, we will refund the fees paid for that Software, and the License for that Software will terminate.
- 6.2. **Customer and Customer Reorganization.** Customer shall mean Oakland County as well as governmental entities within Michigan that Customer provides I.T. services to during the term of the Enterprise License Agreement pursuant to the terms of an I.T. Services Agreement with Customer. Except as set forth below, Customer shall not, and shall not allow or permit any third party to, deploy, use or provide access to the Offerings for the benefit of the operations of any other group, entity, department or agency which (a) is in a controlling, parallel, or subordinate position; or (b) becomes part of or takes over part of the operations of Customer as a result of a government or academic Reorganization. "Reorganization" means any consolidation, division, change of control, or other similar action involving Customer and any third party. It is understood by the parties that Customer intends to deliver applications services to governmental entities within the State of Michigan. The majority of these governmental entities have executed an I.T. Services Agreement to receive Information Technology Services from the Customer for the betterment of public service pursuant to the laws of the State of Michigan.
- 6.3. **Disclaimer of Warranty.** OTHER THAN THE LIMITED WARRANTY IN SECTION 6.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR SUPPLIERS, DISCLAIM ALL WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO THE SOFTWARE AND DOCUMENTATION. NEITHER WE NOR OUR SUPPLIERS WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED, THAT IT WILL BE FREE FROM DEFECTS OR ERRORS, OR THAT IT WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

7. **INTELLECTUAL PROPERTY INDEMNIFICATION.**

- 7.1. **Defense and Indemnification.** Subject to the remainder of this Section 7, we will: (a) defend you against any Infringement Claim; and (b) indemnify you from all fines, damages, and costs finally awarded against you by a court of competent jurisdiction or a government agency, or agreed to in a settlement, with regard to any Infringement Claim. These obligations are applicable only if you: (i) provide us with notice of the Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve us of our indemnification obligations only to the extent that the delay prejudices us); (ii) allow us sole control over the

defense and settlement of the Infringement Claim; and (iii) reasonably cooperate in response to our requests for assistance with regard to the Infringement Claim. We will not, without your prior written consent, which may not be unreasonably withheld, conditioned, or delayed, enter into any settlement of any Infringement Claim that obligates you to admit any liability or to pay any unreimbursed amounts to the claimant. You may not settle or compromise any Infringement Claim without our prior written consent.

- 7.2. **Remedies.** If the Software becomes, or in our opinion is likely to become, the subject of an Infringement Claim, we will, at our option and expense: (a) procure the rights necessary for you to keep using the Software; or (b) modify or replace the Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related Support Services, and, upon your certified deletion of the affected Software, refund: (i) for a Perpetual License, the fees paid for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date of Delivery of the Software and any unused, prepaid fees for Support Services, or (ii) for Subscription Software, any prepaid fees, prorated for the remaining portion of the then-current Subscription Term.
- 7.3. **Exclusions.** We will have no obligation under this Section 7 or otherwise with respect to any Infringement Claim based on: (a) combination of the Software with non-VMware products or content; (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer version would have avoided the infringement; (d) any modification to the Software other than those made by us or with our express written approval; (e) any claim that relates to open source software or freeware technology or any derivative or other adaptations thereof that is not embedded by us into the Software; or (f) any Software provided on a no charge, beta, or evaluation basis.
- 7.4. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS SECTION 7 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND OURENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

8. **LIMITATION OF LIABILITY.**

- 8.1. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF CONTENT OR DATA FOR ANY REASON (INCLUDING POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY.
- 8.2. **Cap on Monetary Liability.** OUR LIABILITY FOR ANY CLAIM UNDER THIS EULA WILL NOT EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR \$5000.

8.3. **Exclusions.** THE LIMITATION OF LIABILITY IN SECTIONS 8.1 AND 8.2 WILL NOT APPLY TO (i) OUR INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 OF THIS EULA OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

8.4. **Further Limitations.** Our suppliers have no liability of any kind under this EULA. You may not bring a claim directly against any of them under this EULA. Our liability with respect to any third-party software embedded in the Software is subject to this Section 8.

9. **TERMINATION.**

9.1. **EULA Term.** The term of this EULA begins on Delivery of the Software and continues until this EULA is terminated in accordance with this Section 9.

9.2. **Termination for Cause.** We may terminate this EULA effective immediately upon written notice to you if: (a) any payment due under this EULA is not received within thirty (30) days after receiving our written notice that payment is past due; (b) you materially breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of our written notice of the breach; (c) you materially breach any provision of this EULA in a manner that cannot be cured; or (d) you terminate or suspend your business.

9.3. Reserved.

9.4. **Effect of Termination.** Upon termination of this EULA: (a) all Licenses to the Software granted to you under this EULA will immediately end; (b) you must stop all use of the Software and return to us or certify destruction of the Software and License Keys (including copies), and (c) you must return or, if we request, destroy, any of our or our suppliers' Confidential Information in your possession or under your control (other than information that must be retained pursuant to law). Any provision that, by its nature and context is intended to survive termination or expiration of the EULA, will survive, including Sections 1.6 (Open Source Software), 2 (Restrictions; Ownership), 4 (Records and Audit), 6.2 (Software Disclaimer of Warranty), 8 (Limitation of Liability), 9 (Termination), 10 (Confidential Information), 12 (General), 13 (Definitions), and 14 (Terms Applicable to U.S. Federal End Users). Except as otherwise expressly provided in this EULA or as required by applicable law or regulation, termination of this EULA will not entitle you to any refunds, credits, or exchanges.

10. **CONFIDENTIAL INFORMATION.**

10.1. **Protection.** Either party may use Confidential Information of the other party disclosed to it in connection with this EULA to exercise its rights and perform its obligations under this EULA or as otherwise permitted by this EULA. The Recipient will disclose the Discloser's Confidential Information only to the Recipient's employees or contractors who have a need to know the Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than as specified in this Section 10. Recipient will protect the Discloser's Confidential Information from unauthorized use, access, or disclosure in the same manner as the

Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

- 10.2. **Exceptions.** The Recipient's obligations under Section 10.1 with respect to any of the Discloser's Confidential Information will terminate if the Recipient can demonstrate that the information: (a) was already rightfully known to the Recipient at the time of disclosure by the Discloser without any obligation of confidentiality; (b) was disclosed to the Recipient by a third party who had the right to make that disclosure without any confidentiality restrictions; (c) is, or through no fault of the Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to or use of Discloser's Confidential Information. In addition, the Recipient will be allowed to disclose Confidential Information to the extent that disclosure is required by law or by order of a court or similar judicial or administrative body of competent jurisdiction, provided that the Recipient notifies the Discloser of the required disclosure promptly and in writing and cooperates with the Discloser, at the Discloser's request and expense, in any lawful action by Discloser to contest or limit the scope of the required disclosure.
- 10.3. **Injunctive Relief.** Nothing in this EULA limits either party's ability to seek equitable relief.
11. **ACCOUNT, OPERATIONS AND USAGE DATA.** We collect your contact information and information about your purchase to manage your account and fulfill your Orders. We also process (a) information necessary to facilitate the delivery of the Software, including verifying compliance with the terms of this EULA, invoicing, and providing Support Services, and (b) Software configuration, performance, and usage data for the purposes of improving VMware products and services and user experience, and other analytics purposes as set forth in the Product Guide. To the extent any of that data includes information which identifies an individual, we will process that information in accordance with VMware's Products & Services Privacy Notice available at <https://www.vmware.com/help/privacy.html>.
12. **GENERAL.**
- 12.1. **Transfers; Assignment.** Except to the extent transfer may not legally be restricted or as permitted by our transfer and assignment policies and in all cases following the process set forth at www.vmware.com/support/policies/licensingpolicies.html, you must not assign this EULA, any Order, or any right or obligation pursuant to this EULA, or delegate any performance under this EULA, without our prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. Any other attempted assignment or transfer by you will be void. We may use our Affiliates or other suppliers to provide services to you, provided that we remain responsible to you for the performance of the services.
- 12.2. **Notices.** Any notice by us to you under this EULA will be given: (a) by email to the email address associated with your account, if you have subscribed to this method of receiving notices; or (b) by posting in the VMware customer portal. You must direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.

- 12.3. **Waiver.** Waiver of a breach of any provision of this EULA will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.
- 12.4. **Severability.** If any part of this EULA is held to be invalid or unenforceable, all remaining provisions will remain in force to the extent feasible to effectuate the intent of the parties.
- 12.5. **Compliance with Laws.** Each party must comply with all laws applicable to the actions contemplated by this EULA.
- 12.6. **Export Control; Government Regulations.** You acknowledge that the Software is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to Defense Federal Acquisition Regulation Supplement (“**DFARS**”) Section 227.7202 and Federal Acquisition Regulation (“**FAR**”) Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and Documentation by or for the U.S. Federal Government shall be governed solely by the terms and conditions of this EULA.
- 12.7. **Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word “including” means “including but not limited to”.
- 12.8. **Language.** This EULA is in English, and the English language version governs any conflict with a translation into any other language.
- 12.9. **Governing Law.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan, excluding Michigan’s conflict of law principles. Except as otherwise required by law or court rule, any action or claim brought to enforce, interpret, or arising under or related to this Agreement shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
- 12.10. **Third-Party Rights.** Other than as expressly provided in this EULA, this EULA does not create any rights for any person who is not a party to it, and only persons who are parties to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.11. **Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following descending order of precedence applies unless otherwise set forth in an enterprise license agreement: (a) the Product Guide, (b) this EULA and (c) the Order. This EULA supersedes any conflicting or additional terms and conditions of any purchase order, acknowledgement or confirmation, or other document issued by you for or regarding the Software.

12.12. **Entire Agreement.** This EULA, together with all accepted Orders and the Product Guide, contains the entire agreement of the parties with respect to the subject matter of this EULA and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding its subject matter. This EULA may be amended only in a writing signed by authorized representatives of both parties.

13. **DEFINITIONS.**

13.1. **"Affiliate"** means, with respect to a party at a given time, an entity that is directly or indirectly controlled by, is under common control with, or controls that party, where "control" means an ownership, voting, or similar interest representing fifty percent (50%) or more of the total interests outstanding of that entity.

13.2. **"Confidential Information"** means information or materials provided by one party ("**Discloser**") to the other party ("**Recipient**") which is in tangible form and labelled "confidential" or the like, or information which a reasonable person knew or should have known to be confidential. The following information is considered our Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding our product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

13.3. **"Delivery"** means either delivery of the physical media (if applicable) or the date you are notified of availability for electronic download.

13.4. **"Documentation"** means that documentation that we generally provide with the Software, as revised by us from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

13.5. **"Guest Operating Systems"** means instances of third-party operating systems licensed by you, installed in a Virtual Machine, and run using the Software.

13.6. **"Infringement Claim"** means any claim by a third party that the Software infringes any patent, trademark or copyright of that third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of your actions) under the laws of: (a) the United States; (b) Canada; (c) the European Economic Area; (d) the United Kingdom; (e) Australia; (f) New Zealand; (g) Japan; or (h) the People's Republic of China, to the extent that those countries are part of the Territory for the License.

- 13.7. **“Intellectual Property Rights”** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.
- 13.8. **“License”** means a license granted under Section 1.1 (General License Grant). **“License Key”** means a serial number that enables you to activate the Software. **“License Term”** means the duration of a License as specified in the Order.
- 13.9. **“Open Source Software”** or **“OSS”** means software components embedded in the Software and provided under separate license terms, which can be found either in the open_source_licenses.txt file (or similar file) provided within the Software or at www.vmware.com/download/open_source.html.
- 13.10. **“Order”** means a purchase order, enterprise license agreement, or other ordering document for Software governed by this EULA, issued by you to us or to your VMware channel partner and is accepted by us as set forth in Section 3 (Order).
- 13.11. **“Perpetual License”** means a License to the Software with a perpetual term.
- 13.12. **“Product Guide”** means the current version of the VMware Product Guide at the time of your Order, which can be found through links at www.vmware.com/download/eula.
- 13.13. **“Support Services Terms”** means our then-current support policies, copies of which are posted at www.vmware.com/support/policies.
- 13.14. **“Software”** means the VMware computer programs listed on our commercial price list to which you acquire a license under an Order, together with any related software code we provide pursuant to a support and subscription service contract and that is not subject to a separate license agreement.
- 13.15. **“Subscription Software”** means Software that is licensed for a specific term (**“Subscription Term”**).
- 13.16. **“Territory”** means the country or countries in which you have been invoiced, except as otherwise provided in the Product Guide. If the Territory for your Software includes any European Economic Area member states or the United Kingdom, you may deploy that Software throughout the European Economic Area and the United Kingdom.
- 13.17. **“Third-Party Agent”** means a third party delivering information technology services to you pursuant to a contract with you.
- 13.18. **“U.S. Federal End User”** means any of the following agencies or establishments of the U.S. Federal Government: (a) executive departments as defined by 5 U.S.C. 101, (b) military departments as defined by 5 U.S.C. 102, (c) government corporations as defined by 5 U.S.C. 103, (d) independent establishments as defined by 5 U.S.C. 104, and (e) any establishment in the

legislative or judicial branch of the U.S. Federal Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

13.19. **"User"** means an employee, contractor, or Third-Party Agent that you have authorized to use the Software as permitted under this EULA.

13.20. **"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

13.21. **"VMware", "We", or "Us"** means VMware, Inc., a Delaware corporation, if the billing address for your Order is in the United States, or VMware International Unlimited Company, a company organized and existing under the laws of Ireland, if the billing address for your Order is outside the United States.

13.22. **"You"** means you individually or the legal entity that you represent. If you are entering into the EULA for an entity, you represent that you have the authority to bind that entity.

14. **TERMS APPLICABLE TO U.S. FEDERAL END USERS.** If you are a U.S. Federal End User, the following terms and conditions supersede or modify the referenced provisions of this EULA.

14.1. Replace the second paragraph of the preamble with the following:

"BY PURCHASING THE SOFTWARE UNDER A CONTRACT OR ORDER THAT INCORPORATES THIS EULA, YOU (THE U.S. FEDERAL END USER) AGREE TO BE BOUND BY THE TERMS OF THIS EULA."

14.2. Replace the first sentence of Section 1.1 ("General License Grant") with the following:

"We grant you a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)), commercial item license to deploy the Software within the Territory and to use the Software and the Documentation during the term of the license, solely for your internal business operations, and subject to the provisions of the Product Guide."

14.3. Replace Section 1.5 ("Services for Affiliates") with "Reserved."

14.4. Replace subsection (a) in the first sentence of Section 2.1 ("License Restrictions") with the following:

"(a) use the Software in an application services provider, service bureau, hosted IT services, or similar capacity for third parties;"

14.5. Replace Section 3 ("Order") with the following:

"Your Order is subject to this EULA. No Orders are binding on us until we accept them, and all Orders must expressly incorporate this EULA. Orders for Software are deemed accepted upon

Delivery of the Software included in the Order. Purchase orders issued to us donot have to be signed by you to be valid and enforceable unless required by applicable law. All Orders are non-refundable and non- cancellable except as expressly provided in this EULA. Any refunds to which you are entitled under this EULA will be remitted to you orto the VMware channel partner from which you purchased your Software license.”

14.6. Replace Section 4 (“Records and Audit”) with the following:

“You must maintain accurate records of your use of the Software sufficient to show compliance with the terms of this EULA. We have the right to audit those records and your use of the Software, at our own expense, to confirm compliance with the terms of this EULA. That audit is subject to reasonable prior notice and will not unreasonably interfere with your business activities. We may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. Neither we nor any third-party auditor shall have physical access to your computing devices in connection with any such audit without your prior written consent. You must reasonably cooperate with us and any third-party auditor. We reserve the right to seek recovery of any underpayments revealed by the audit in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes) or other applicable agency supplement. No payment obligation shall arise on your behalf until the conclusion of the dispute process. If an audit necessitates access to classified information, as that term is defined in the National Industrial Security Program Operating Manual (NISPOM), then the audit will be conducted by auditor(s) possessing a personal security clearance as defined in the NISPOM (“PCL”) at the appropriate level. In those cases, VMware and any third-party auditor will disclose Classified Information only to person(s) who both possess a PCL and have a need to know.”

14.7. Replace Section 7.1 (“Defense and Indemnification”) with the following:

“Subject to the remainder of this Section 7 and 28 U.S.C. 516, we will (a) defend you against an Infringement Claim; and (b) indemnify you from costs and damages finally awarded against you by a court of competent jurisdiction or a government agency or agreed to in a settlement approved by us. These obligations are applicable only if you: (i) provide us with notice of any Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve us of our indemnification obligations only to the extent that the delay prejudices us); (ii) allow us the opportunity to participate in the claim’s defense and settlement as provided in applicable laws, rules, or regulations; and (iii) reasonably cooperate in response to our requests for assistance with regard to the Infringement Claim. You must make every effort to permit us to participate fully in the defense or settlement of any Infringement Claim; however, we acknowledge that such participation will be under the control of the U.S. Department of Justice.

14.8. Replace Section 7.2 (“Remedies”) with the following:

“If the Software becomes, or in our opinion is likely to become, the subject of an Infringement Claim, we will, at our option and expense:

- (a) procure the rights necessary for you to keep using the Software; or (b) modify or replace the Software to make it non-infringing. If we determine that the foregoing alternatives are not reasonably available, then you agree to terminate the License to the affected Software and discontinue the related Support Services upon our written request, and, upon your certified deletion of the affected Software, we will refund: (i) for a Perpetual License, the fees paid for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date of Delivery of the Software and any unused, prepaid fees for Support Services, or (ii) for Subscription Software, any prepaid fees, prorated for the remaining portion of the then-current Subscription Term. Nothing in this Section 7.2 (Remedies) will limit our obligations under Section 7.1 (Defense and Indemnification), provided that you replace the allegedly infringing Software upon our making alternate Software available to you, or that you discontinue using the allegedly infringing Software upon receiving VMware's written request to terminate the affected License. The foregoing is subject to the U.S. Federal Government's right to require continued use of the Software pursuant to 28 U.S.C. 1498. In the event of such continued use, you agree to notify us in writing and undertake at your expense the defense of any Infringement Claim against you, and we shall have no further indemnification obligation; however, we may participate at our own expense in the defense of any Infringement Claim if the claim is against us."

- 14.9. Replace the last sentence of Section 8.4 ("Further Limitations") with the following:

"You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises or such longer period as is mandated by 41 U.S.C. chapter 71 (Contract Disputes). Nothing in this Section 8 will impair the U.S. Federal Government's right to recover for fraud or crimes arising out of this EULA as permitted under any applicable federal fraud statute, including the False Claims Act (31 U.S.C. 3729-3733)."

- 14.10. Add the following to the beginning of Section 9.2 ("Termination for Cause"):

"Subject to, and to the extent not prohibited by, 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes),"

- 14.11. Replace Section 9.3 ("Termination for Insolvency") with the following:

"9.3. Termination by You. You may terminate this EULA in accordance with FAR 52.212-4(l) or FAR 52.212-4(m), if applicable."

- 14.12. Replace Section 12.1 ("Transfers; Assignment") with the following:

“Except to the extent transfer may not legally be restricted or as permitted by our transfer and assignment policies and in all cases following the process set forth at www.vmware.com/support/policies/licensingpolicies.html, you must not assign this EULA, any Order, or any right or obligation pursuant to this EULA, or delegate any performance under this EULA, without our prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. We may assign our right to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) and FAR 52.212-4(b), and we may assign this EULA to the extent not prohibited by the Anti-Assignment Act (41 U.S.C. 15). Subject to the requirements of FAR 42.12 (Novation and Change-of-Name Agreements), you shall recognize our successor in interest following a transfer of our assets or a change in our name. Any other attempted assignment or transfer by either party will be void. Subject to the foregoing, this EULA will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. We may use our affiliates or other suppliers to provide services to you, provided that we remain responsible to you for the performance of the services.”

14.13. Replace Section 12.9 (“Governing Law”) with the following:

“This EULA is governed by the applicable federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods does not apply.”

14.14. Add the following to the end of Section 12.10 (“Third-Party Rights”):

“Notwithstanding the foregoing, for any Orders placed with a VMware channel partner, the VMware channel partner may bring a claim to enforce the terms of this EULA at our request and on our behalf.”

14.15. Replace Section 12.11 (“Order of Precedence”) with the following:

“12.11. Product Guide. The Product Guide is incorporated by reference in this EULA. To the extent that any terms and conditions in this EULA or in the Product Guide are inconsistent with applicable federal law, they shall be deemed deleted and unenforceable as applied to your Order. In the event of conflict or inconsistency among the Product Guide and this EULA, the Product Guide shall take precedence unless otherwise provided in an enterprise license agreement. This EULA supersedes any conflicting or additional license terms contained in any purchase order, acknowledgement or confirmation, or other document issued by you for or regarding the Software.”

14.16. Replace Section 12.12 (“Entire Agreement”) with the following:

“This EULA and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding its subject matter. This EULA may be amended only in writing signed by authorized representatives of both parties.”

14.17. Replace Section 13.1 (“Affiliate”) with “Reserved.”

14.18. Replace Section 13.12 (“Order”) with the following:

“Order” means a purchase order, enterprise license agreement, or other ordering document issued by you to us or to your VMware channel partner that references and incorporates this EULA and is accepted by us as set forth in Section 3 (Order).”

14.19. Replace Section 13.15 (“Support Services Terms”) with the following:

“Support Services Terms” means our then-current support policies, copies of which are posted at www.vmware.com/support/policies, subject to FAR 52.212-4(u) and General Services Acquisition Manual (“GSAM”) 552.232-78 (Commercial Supplier Agreements— Unenforceable Clauses).”

14.20. Replace Section 13.18 (“Territory”) with the following:

“Territory” means the United States of America, including U.S. Federal Government Facilities located outside of the United States of America, except as otherwise provided in the Product Guide. For purposes of this section, “U.S. Federal Government Facilities” means buildings that are both 100% owned and controlled by the U.S. Federal Government and includes land, bases, installations, vessels, craft, and ships that are both 100% owned and controlled by the U.S. Federal Government. In the foregoing sentence, “owned” also includes leased throughout the entire term of the Order.”

12.21. Replace Section 13.23 (“VMware,” “We,” or “Us”) with the following:

“VMware,” “We,” or “Us” means VMware, Inc., a Delaware corporation.”

EXHIBIT VIII

ACKNOWLEDGEMENT OF INDEPENDENT EMPLOYMENT STATUS

I, _____, acknowledge that I am an employee or subcontractor of
(Name of Contractor's Company): _____

(hereinafter "Company") under Contract #: _____, and

- At all times during my assignment to Oakland County, I will remain an employee or subcontractor of the Company
- I am not an employee of Oakland County; and,
- I may not represent myself as an employee of Oakland County.

I understand that:

- Company is responsible for establishing the conditions of my assignment to Oakland County; and
- Company is solely responsible for compensating me for my services; and
- I understand and agree that as an employee or subcontractor of Company, I am not eligible to participate in or accrue any benefits under any of Oakland County's employee benefits or benefit plans, including retirement, deferred compensation, insurance (including without limitation: health, disability dental and life insurance), vacation pay, and any other similar plans and programs. However, if I am a retired County employee, I may receive vested post-employment benefits such as retiree healthcare and pension benefits from Oakland County. I understand that the post-retirement benefits I receive from the County cannot be enhanced by my work for the above Contractor.

I acknowledge that:

- I have no copyright, patent, trademark or trade secret rights to any Oakland County Intellectual Property or any work developed by me while providing services to Oakland County; and,
- If I will be given access to the County Network, I will comply with the Oakland County Electronic Communications and Use of Technology Policy.
- I will comply with and sign the FBI Criminal Justice Information Services Security Addendum if I will have access to CJIS Data.

Signed: _____

Date: _____

Print Name: _____

Witness: _____

Date: _____

(Contractor or Contractor Employee must provide a copy of completed form to the Compliance Office-Purchasing Unit – Purchasing@oakgov.com.)

EXHIBIT IX

Access Interactive Scope of Services for Infrastructure Systems

1. Introduction

- 1.1. Access Interactive shall provide County with Dell Server and Storage hardware with associated Support and Warranties, Licenses where applicable, and related Software. Access Interactive shall also provide County with VMware Licenses, Support, and Subscriptions as quoted.
- 1.2. Access Interactive may provide consulting services, providing various roles to accomplish a particular task or set of tasks related to a County project. If these consulting services are requested, a Scope of Services for that specific engagement will be added through a Contract Amendment.

2. PRICING

Contractor shall provide County with the Deliverables described in this section 2 for the prices stated herein. The pricing provided below is from a Discount Off List (DOL), is a standard minimum discount off of list prices, and is presented as a standard "Or Better" discount.

2.1. Dell EMC

When a quote is requested by County, all Hardware, Support, and related products will be quoted at 50% off list price.

2.2. VMware

When requested by County, all New Licenses will be quoted at 10% off list price and ongoing Support or subscriptions will be quoted at 4% off list price.

2.3. Access Interactive Consulting Services

Contractor will provide consulting services to the County for the rates provided below, if requested by County. Consulting services require a mutual written Contract Amendment that describes the services that will be performed.

Role	Hourly Rate
Project Manager	\$ 165.00
Network Architect/Engineer	\$ 165.00
Network Administrator	\$ 165.00
Network Technician	\$ 165.00
Server Architect/Engineer	\$ 165.00
Server Administrator	\$ 165.00
Server Technician	\$ 165.00
Visualization Architect/Engineer	\$ 185.00
Visualization Administrator	\$ 165.00
Telecom Architect	\$ 165.00
Installer/Technician	\$ 145.00

Security Specialist	\$ 195.00
Network Security Technician	\$ 165.00
Bench Technician	\$ 85.00

2.4 - Value Added Alternatives Provided by Contractor.

When a quote for Value Added Alternatives (listed below) is requested by County, the Value Added Alternatives (listed below) will be quoted at the percentage off list price provided in the below table.

Value Added Alternatives Description	Discount Off List
Dell R750 Server Hardware	66%
Dell R750 5yr 4Hr Mission Critical	66%
Dell R650 Server Hardware	66%
Dell R650 5yr 4Hr Mission Critical	66%
Dell PowerStore 1000X SAN	73%
Pure Flash Array FA-X20R3-ETH-44TB with 3 Year Gold Support	55%
Pure Flash Array FA-C40R3 with 3 Year Gold Support	55%
Pure FlashBlade with 3 Year Silver Support	55%
Blumira SIEM Licensing with 1 Year Support per User	23%
Blumira SIEM Licensing with 3 Year Support per User	23%
Veeam Availability Suite Universal License - Upfront Billing License (1 Year) + Production Support - 10 Instances - Public Sector	15%
Veeam Availability Suite Universal NAS License - Upfront Billing License (1 Year) + Production Support - 10 Instances - 5TB per Instance=30TB - Public Sector	15%
Veeam Orchestrator DR Pack - Upfront Billing License (1 Year) + Production Support - Public Sector	3%