



**Master Service Agreement  
(COTS Software)**

This Master Service Agreement (this "**Agreement**") is agreed to between Michigan State University (the "**University**") and [INSERT COMPANY NAME] ("**Supplier**"), a [INSERT STATE & ENTITY STATUS, E.G., A MICHIGAN CORPORATION OR A TEXAS LIMITED LIABILITY COMPANY]. This Agreement is effective on [MONTH, DAY, YEAR] ("**Effective Date**"), and unless earlier terminated, will expire on [MONTH, DAY, YEAR] (the "**Term**"). This Agreement may be renewed for up to three (3) additional one-year period(s). Renewal must be by written notice from the University and will automatically extend the Term of this Agreement.

**1. Definitions.** For the purposes of this Agreement, the following terms have the following meanings:

"**Acceptance**" has the meaning set forth in **Section 8.5**.

"**Acceptance Tests**" means such tests as may be conducted in accordance with **Section 8** and the Statement of Work to determine whether the Software meets the requirements of this Agreement and the Documentation.

"**Agreement**" has the meaning set forth in the preamble.

"**Agreement Administrator**" is the individual appointed by each party to (a) administer the terms of this Agreement, and (b) approve any Change Notices under this Agreement. Each party's Agreement Administrator will be identified in the Statement of Work.

"**Authorized Users**" means all individuals who are authorized by the University to use or access the Software.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which the University is authorized or required by Law to be closed for business.

"**Business Requirements Specification**" means the initial specification setting forth the University's business requirements regarding the features and functionality of the Software, as set forth in the Statement of Work.

"**Change**" has the meaning set forth in **Section 2.2**.

"**Change Notice**" has the meaning set forth in **Section 2.2(b)**.

"**Change Proposal**" has the meaning set forth in **Section 2.2(a)**.

"**Change Request**" has the meaning set forth in **Section 2.2**.

"**Confidential Information**" has the meaning set forth in **Section 17.1**.



**"Configuration"** means University-specific changes made to the Software without Source Code or structural data model changes occurring.

**"Deliverables"** means the Software, and all other documents and other materials that Supplier is required to or otherwise does provide to the University under this Agreement and otherwise in connection with any Services, including all items specifically identified as Deliverables in the Statement of Work.

**"Dispute Resolution Procedure"** has the meaning set forth in **Section 24.1**.

**"Documentation"** means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Software.

**"Effective Date"** has the meaning set forth in the preamble.

**"Fees"** means collectively, the License Fees and Implementation Fees.

**"Force Majeure"** has the meaning set forth in **Section 23.1**.

**"Harmful Code"** means any: (a) virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise prevent, restrict or impede the University's or any Authorized User's use of such software.

**"Implementation Fees"** has the meaning set forth in **Section 12.2**.

**"Implementation Plan"** means the schedule included in the Statement of Work setting forth the sequence of events for the performance of Services under the Statement of Work, including the Milestones and Milestone Dates.

**"Integration Testing"** has the meaning set forth in **Section 8.1(c)**.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**"License Fee"** has the meaning set forth in **Section 12.1**.

**"Loss or Losses"** means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind,





including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"Maintenance Release"** means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Supplier may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

**"Milestone"** means an event or task described in the Implementation Plan under the Statement of Work that must be completed by the corresponding Milestone Date.

**"Milestone Date"** means the date by which a particular Milestone must be completed as set forth in the Implementation Plan under the Statement of Work.

**"Modification"** means University-specific changes made to the Source Code of the Software to enhance, improve or otherwise create derivative works of the Software.

**"New Version"** means any new version of the Software that the Supplier may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Supplier's designation of a new version number.

**"Nonconformity"** or **"Nonconformities"** means any failure or failures of the Software to conform to the requirements of this Agreement, including any applicable Documentation.

**"Operating Environment"** means, collectively, the platform, environment and conditions on, in or under which the Software is intended to be installed and operate, as set forth in the Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software and system architecture and configuration.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

**"Pricing Schedule"** means the schedule attached as **Schedule B**, setting forth the License Fees and Implementation Fees, and any other fees, rates and prices payable under this Agreement.

**"Project Manager"** is the individual appointed by each party to (a) monitor and coordinate the day-to-day activities of this Agreement, and (b) for the University, to sign off on its notice of Acceptance for the Software. Each party's Project Manager will be identified in the Statement of Work.

**"Representatives"** means a party's employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors and permitted assigns.



**"Services"** means any of the services Supplier is required to or otherwise does provide under this Agreement, the Statement of Work as more fully described in the body of this Agreement and the Statement of Work.

**"Site"** means the physical location designated by the University in, or in accordance with, this Agreement or the Statement of Work for delivery and installation of the Software.

**"Software"** means Supplier's software set forth in the Statement of Work, and any Maintenance Releases provided to the University and any Configurations or Modifications made by or for the University pursuant to this Agreement, and all copies of the foregoing permitted under this Agreement.

**"Source Code"** means the human readable source code of the Software to which it relates, in the programming language in which the Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

**"Specifications"** means, for the Software, the specifications collectively set forth in the Business Requirements Specification and Technical Specification, together with any other specifications set forth in the Statement of Work or Documentation.

**"Statement of Work"** means the statement of work attached as **Schedule A** to this Agreement.

**"Supplier"** has the meaning set forth in the preamble.

**"Supplier Personnel"** means all employees of Supplier and any subcontractors involved in the performance of Services hereunder.

**"University"** has the meaning set forth in the preamble.

**"University Data"** has the meaning set forth in **Section 13.1**.

**"University Materials"** means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Supplier by or on behalf of the University in connection with this Agreement, whether or not the same are owned by the University, a Third Party or in the public domain.

**"University Resources"** has the meaning set forth in **Section 6.1(a)**.

**"Technical Specification"** means, with respect to any Software, the documentation setting forth the technical specifications for such Software and included in the Statement of Work.





"**Term**" has the meaning set forth in the preamble.

"**Testing Period**" has the meaning set forth in **Section 8.1(b)**.

"**Third Party**" means any Person other than the University or Supplier.

"**Transition Period**" has the meaning set forth in **Section 18.3**

"**Transition Responsibilities**" has the meaning set forth in **Section 18.3**.

"**User Data**" means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system or network by or on behalf of the University, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the University under this Agreement, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

**2. Statement of Work.** Supplier shall provide the Services and Deliverables pursuant to the Statement of Work. The terms and conditions of this Agreement will apply at all times to the Statement of Work. The University shall have the right to terminate the Statement of Work as set forth in **Section 18**. Supplier acknowledges that time is of the essence with respect to Supplier's obligations under the Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Agreement and the Statements of Work (including the Implementation Plan and all Milestone Dates) is strictly required.

2.1 Statement of Work Requirements. The Statement of Work will include the following:

(a) names and contact information for Supplier's Agreement Administrator and Project Manager;

(b) names and contact information for the University's Agreement Administrator and Project Manager.

(c) a detailed description of the Services to be provided under this Agreement, including any training obligations of Supplier;

(d) a detailed description of the Software to be provided under this Agreement, including the:

(i) version and release number of the Software;

(ii) Business Requirements Specification;

(iii) Technical Specification; and



- (iv) a description of the Documentation to be provided;
- (e) an Implementation Plan, including all Milestones, the corresponding Milestone Dates and the parties' respective responsibilities under the Implementation Plan;
- (f) the due dates for payment of Fees and any invoicing requirements, including any Milestones on which any such Fees are conditioned, and such other information as the parties deem necessary; and
- (g) a detailed description of all University Resources required to complete the Implementation Plan.

**2.2 Change Control Process.** The University may at any time request in writing (each, a "**Change Request**") changes to the Statement of Work, including changes to the Services and Implementation Plan (each, a "**Change**"). Upon the University's submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this **Section 2.2**.

(a) As soon as reasonably practicable, and in any case within twenty (20) Business Days following receipt of a Change Request, Supplier will provide the University with a written proposal for implementing the requested Change ("**Change Proposal**"), setting forth:

- (i) a written description of the proposed Changes to any Services or Deliverables;
- (ii) an amended Implementation Plan reflecting: (A) the schedule for commencing and completing any additional or modified Services or Deliverables; and (B) the effect of such Changes, if any, on completing any other Services under the Statement of Work;
- (iii) any additional University Resources Supplier deems necessary to carry out such Changes; and
- (iv) any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Supplier requires to carry out the Change.

(b) Within thirty (30) Business Days following the University's receipt of a Change Proposal, the University will by written notice to Supplier, approve, reject, or propose modifications to such Change Proposal. If the University proposes modifications, Supplier must modify and re-deliver the Change Proposal reflecting such modifications, or notify the University of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the University's approval of the Change Proposal or the parties' agreement on all proposed modifications, as the case may be, the parties will execute a written agreement to the Change Proposal ("**Change Notice**"), which Change Notice will be signed by the University's





Agreement Administrator and will constitute an amendment to the Statement of Work to which it relates; and

(c) If the parties fail to enter into a Change Notice within fifteen (15) Business Days following the University's response to a Change Proposal, the University may, in its discretion:

- (i) require Supplier to perform the Services under the Statement of Work without the Change;
- (ii) require Supplier to continue to negotiate a Change Notice;
- (iii) initiate a Dispute Resolution Procedure; or
- (iv) notwithstanding any provision to the contrary in the Statement of Work, terminate this Agreement under **Section 18**.

(d) No Change will be effective until the parties have executed a Change Notice. Except as the University may request in its Change Request or otherwise in writing, Supplier must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Supplier will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.

(e) The performance of any functions, activities, tasks, obligations, roles and responsibilities comprising the Services as described in this Agreement are considered part of the Services and, thus, will not be considered a Change. This includes the delivery of all Deliverables in accordance with their respective Specifications, and the diagnosis and correction of Non-Conformities discovered in Deliverables prior to their Acceptance by the University or, subsequent to their Acceptance by the University, as necessary for Supplier to fulfill its associated warranty requirements.

(f) Supplier may, on its own initiative and at its own expense, prepare and submit its own Change Request to the University. However, the University will be under no obligation to approve or otherwise respond to a Change Request initiated by Supplier.

### 3. Software License and Restrictions.

3.1 Supplier License Grant. Supplier hereby grants to the University, through its Authorized Users, a nonexclusive, royalty-free, irrevocable (except as provided herein) right and license during the Term and such additional periods, if any, as Supplier is required to perform Services under this Agreement, to access and use the Software, including in operation with other software, hardware, systems, networks and services, for the University's business purposes, including for processing University Data.



3.2 License Restrictions. The University will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software available to any third party, except as expressly permitted by this Agreement or in the Statement of Work; or (b) use or authorize the use of the Software or Documentation in any manner or for any purpose that is unlawful under applicable Law.

#### 4. **Software Implementation.**

4.1 Implementation. Supplier will deliver, install, configure, integrate, customize, modify and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in the Statement of Work.

4.2 Site Preparation. Unless otherwise set forth in the Statement of Work, the Supplier is responsible for ensuring the relevant Operating Environment is set up and in working order to allow Supplier to deliver and install the Software on or prior to the applicable Milestone Date. Supplier will provide the University with such notice as is specified in the Statement of Work, prior to delivery of the Software to give the University sufficient time to prepare for Supplier's delivery and installation of the Software. If the University is responsible for Site preparation, Supplier will provide such assistance as the University requests to complete such preparation on a timely basis.

5. **Performance of Services**. Supplier will provide all Services and Deliverables in a timely, professional and workmanlike manner and in accordance with the terms, conditions, and Specifications set forth in this Agreement and the Statement of Work.

##### 5.1 Supplier Personnel.

(a) Supplier is solely responsible for all Supplier Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

(b) Prior to any Supplier Personnel performing any Services, Supplier will:

- (i) ensure that such Supplier Personnel have the legal right to work in the United States;
- (ii) upon request, require such Supplier Personnel to execute written agreements, in form and substance acceptable to the University, that bind such Supplier Personnel to confidentiality provisions that are at least as protective of the University's information (including all Confidential Information) as those contained in this Agreement; and

(c) Supplier may be required to perform criminal background checks of its Personnel pursuant to the MSU Contractor Criminal Background Check Requirements Policy ("CBC





**Policy**"), available at <https://upl.msu.edu/common/documents/criminal-back-ground-check.pdf>. If Supplier is subject to the CBC Policy, Supplier must sign and deliver the Contractor Certification for Criminal Background Checks to University prior to the provision of any services or delivery of any goods. University reserves the right to audit compliance with the CBC Policy requirements and may require further documentation of compliance from Supplier. Non-compliance with the Policy is considered a material breach of this Agreement, which may result in a termination for cause.

(d) Supplier and all Supplier Personnel will comply with all rules, regulations, and policies of the University, which are available at: <https://upl.msu.edu/for-suppliers/policies-requirements/index.html>.

(e) The University reserves the right to require the removal of any Supplier Personnel found, in the judgment of the University, to be unacceptable. The University's request must be written with reasonable detail outlining the reasons for the removal request. Replacement personnel for the removed person must be fully qualified for the position. If the University exercises this right, and Supplier cannot immediately replace the removed personnel, the University agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the University's required removal.

5.2 Supplier's Project Manager. Throughout the Term of this Agreement, Supplier must maintain a Supplier employee acceptable to the University to serve as Supplier's Project Manager. Supplier's Project Manager will be identified in the Statement of Work.

(a) Supplier's Project Manager must:

- (i) have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;
- (ii) be responsible for overall management and supervision of Supplier's performance under this Agreement; and
- (iii) be the University's primary point of contact for communications with respect to this Agreement, including with respect to giving and receiving all day-to-day approvals and consents.

(b) Supplier's Project Manager must attend all regularly scheduled meetings as set forth in the Implementation Plan, and will otherwise be available as set forth in the Statement of Work.

(c) Supplier will maintain the same Project Manager throughout the Term of this Agreement, unless:

- (i) the University requests in writing the removal of Supplier's Project Manager;



- (ii) the University consents in writing to any removal requested by Supplier in writing;
- (iii) Supplier's Project Manager ceases to be employed by Supplier, whether by resignation, involuntary termination or otherwise.

(d) Supplier will promptly replace its Project Manager on the occurrence of any event set forth in **Section 5.2(c)**. Such replacement will be subject to the University's prior written approval.

5.3 Subcontractors. Supplier must notify the University in writing if it subcontracts any Services, in whole or in part, to a Subcontractor. Suppliers use of Subcontractors is subject to the following:

(a) Supplier must ensure each Subcontractor complies with all relevant terms of this Agreement, including all provisions relating to University Data or other Confidential Information of the University, and will have in place written agreements with any such Subcontractor which ensures such compliance;

(b) Supplier will remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor's employees and agents, who, to the extent they are involved in providing any Services, are deemed Supplier Personnel) to the same extent as if such acts or omissions were by Supplier; and

(c) any noncompliance by any Subcontractor or its employees or agents with the provisions of this Agreement or the Statement of Work will constitute a breach by Supplier.

## 6. University Obligations.

6.1 University Resources and Access. The University is responsible for:

(a) providing the University Materials and such other resources as may be specified in the Statement of Work (collectively, "**University Resources**"); and

(b) providing Supplier Personnel with such access to the Site(s) and Operating Environment as is necessary for Supplier to perform its obligations on a timely basis as set forth in the Statement of Work.

6.2 University Project Manager. Throughout the Term of this Agreement, the University will maintain a University employee to serve as the University's Project Manager under this Agreement. The University's Project Manager will be identified in the Statement of Work. The University's Project Manager will be available as set forth in the Statement of Work.

## 7. Pre-Delivery Testing.





7.1 Testing By Supplier. Before delivering and installing the Software, Supplier must:

- (a) test the Software to confirm that it is fully operable, meets all applicable Specifications and will function in accordance with the Specifications and Documentation when properly installed in the Operating Environment;
- (b) scan the Software using up-to-date scanning software and definitions to confirm it is free of Harmful Code; and
- (c) remedy any Non-Conformity or Harmful Code identified and retest and rescan the Software.

8. **Acceptance Testing; Acceptance.**

8.1 Acceptance Testing.

(a) Unless otherwise specified in the Statement of Work, upon installation of the Software, Acceptance Tests will be conducted as set forth in this **Section 8** to ensure the Software conforms to the requirements of this Agreement, including the applicable Specifications and Documentation.

(b) All Acceptance Tests will take place at the designated Site(s) in the Operating Environment described in the Statement of Work, commence on the Business Day following installation of the Software and be conducted diligently for up to thirty (30) Business Days, or such other period as may be set forth in the Statement of Work (the "**Testing Period**"). Acceptance Tests will be conducted by the party responsible as set forth in the Statement of Work or, if the Statement of Work does not specify, the University, provided that:

- (i) for Acceptance Tests conducted by the University, if requested by the University, Supplier will make suitable Supplier Personnel available to observe or participate in such Acceptance Tests; and
- (ii) for Acceptance Tests conducted by Supplier, the University has the right to observe or participate in all or any part of such Acceptance Tests.

Supplier is solely responsible for all costs and expenses related to Supplier's performance of, participation in, and observation of Acceptance Testing.

(c) Upon delivery and installation of any Configuration or Modification to the Software under the Statement of Work, additional Acceptance Tests will be performed on the configured or modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software ("**Integration Testing**"). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 8.1**, **Section 8.3**, and **Section 8.4**.



(d) The University may suspend Acceptance Tests and the corresponding Testing Period by written notice to Supplier if the University discovers a material Non-Conformity in the tested Software or part or feature of the Software. In such event, Supplier will immediately, and in any case within ten (10) Business Days, correct such Non-Conformity, whereupon the Acceptance Tests and Testing Period will resume for the balance of the Testing Period.

8.2 Notices of Completion, Non-Conformities, and Acceptance. Within fifteen (15) Business Days following the completion of any Acceptance Tests, including any Integration Testing, the party responsible for conducting the tests will prepare and provide to the other party written notice of the completion of the tests. Such notice must include a report describing in reasonable detail the tests conducted and the results of such tests, including any uncorrected Non-Conformity in the tested Software.

(a) If such notice is provided by either party and identifies any Non-Conformities, the parties' rights, remedies, and obligations will be as set forth in **Section 8.3** and **Section 8.4**.

(b) If such notice is provided by the University, is signed by the University's Project Manager, and identifies no Non-Conformities, such notice constitutes the University's Acceptance of such Software.

(c) If such notice is provided by Supplier and identifies no Non-Conformities, the University will have thirty (30) Business Days to use the Software in the Operating Environment and determine, in the exercise of its sole discretion, whether it is satisfied that the Software contains no Non-Conformities, on the completion of which the University will, as appropriate:

- (i) notify Supplier in writing of Non-Conformities the University has observed in the Software and of the University's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 8.3** and **Section 8.4**; or
- (ii) provide Supplier with a written notice of its Acceptance of such Software, which must be signed by the University's Project Manager.

8.3 Failure of Acceptance Tests. If Acceptance Tests identify any Non-Conformities, Supplier, at Supplier's sole cost and expense, will remedy all such Non-Conformities and re-deliver the Software, in accordance with the requirements set forth in the Statement of Work. Redelivery will occur as promptly as commercially possible and, in any case, within thirty (30) Business Days following, as applicable, Supplier's:

(a) completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Supplier; or

(b) receipt of the University's notice under **Section 8.1(a)** or **Section 8.2(c)(i)**, identifying any Non-Conformities.





8.4 Repeated Failure of Acceptance Tests. If Acceptance Tests identify any Non-Conformity in the Software after a second or subsequent delivery of the Software, or Supplier fails to re-deliver the Software on a timely basis, the University may, in its sole discretion, by written notice to Supplier:

(a) continue the process set forth in this **Section 8**;

(b) accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or

(c) deem the failure to be a non-curable material breach of this Agreement and the Statement of Work and terminate this Agreement for cause in accordance with **Section 18.1**.

8.5 Acceptance. Acceptance (“**Acceptance**”) of the Software (subject, where applicable, to the University’s right to Integration Testing) will occur on the date that is the earliest of the University’s delivery of a notice accepting the Software under **Section 8.2(b)**, or **Section 8.2(c)(ii)**.

9. **Training**. Supplier shall provide training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in the Statement of Work and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

## 10. Maintenance Releases; New Versions

10.1 Maintenance Releases. During the Term, Supplier shall provide the University, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Agreement.

10.2 New Versions. During the Term, Supplier shall provide the University, at no additional charge, with all New Versions, each of which will constitute Software and be subject to the terms and conditions of this Agreement.

10.3 Installation. The University has no obligation to install or use any Maintenance Release or New Version. If the University wishes to install any Maintenance Release or New Version, the University shall have the right to have such Maintenance Release or New Version installed, in the University’s discretion, by Supplier or other authorized party as set forth in the Statement of Work.

## 11. Source Code Escrow

11.1 Escrow Agreement. The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release.

## 12. Fees



12.1 License Fee. In consideration of, and as payment in full for, the rights and license to use the Software and Documentation as provided in this Agreement, the University shall pay to Supplier the license fees (the "**License Fee**") set forth on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Agreement, including the applicable timetable and other provisions of the Statement of Work and this **Section 12**.

12.2 Implementation Fees. In consideration of, and as payment in full for, Supplier's provision of implementation services as provided in this Agreement and the Statement of Work, the University shall pay to Supplier the implementation fees (the "**Implementation Fees**") set forth on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Agreement, including the applicable timetable and other provisions of the Statement of Work and this **Section 12**.

12.3 Invoices. Supplier will invoice the University for Fees in accordance with the requirements set forth in the Statement of Work, including any requirements that condition the rendering of invoices and the payment of Fees upon the successful completion of Milestones. Supplier must submit each invoice in electronic format, via such delivery means and to such address as are specified by the University in the Statement of Work. Each separate invoice must:

- (a) clearly identify the Purchase Order to which it relates, in such manner as is required by the University;
- (b) list each Fee item separately;
- (c) include sufficient detail for each line item to enable the University to satisfy its accounting and charge-back requirements;
- (d) for Fees determined on a time and materials basis, report details regarding the number of hours performed during the billing period, the skill or labor category for such Supplier Personnel and the applicable hourly billing rates; and
- (e) include such other information as may be required by the University as set forth in the Statement of Work.

12.4 Payment Terms. Invoices are due and payable by the University, in accordance with the University's standard payment procedures, which is 30 days after receipt of invoice, provided the University determines that the invoice was properly rendered.

12.5 University Audit of Supplier. University shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of Supplier involving transactions related to this Agreement until the expiration of three (3) years after final payment hereunder. Supplier further agrees to promptly furnish, when requested by University, such books, documents, and records of Supplier as are necessary to verify the accuracy of the amounts invoiced to University against any past or current goods and services provided by Supplier. If any audit discloses an overpayment by University or a discrepancy in the amount





invoiced by Supplier against the goods and services actually provided by Supplier, Supplier will promptly reimburse University within thirty (30) days of University's notification to Supplier of any such overpayment, rectify such discrepancy, or both, and further pay University a fee equal to 25% of the amount of any overpayment.

12.6 Payment Does Not Imply Acceptance. The making of any payment or payments by the University, or the receipt thereof by Supplier, will in no way affect the responsibility of Supplier to perform the Services in accordance with this Agreement, and will not imply the University's Acceptance of any Services or the waiver of any warranties or requirements of this Agreement, including any right to service credits under the Service Level Agreement.

12.7 Payment Disputes. The University may withhold from payment any and all payments and amounts the University disputes in good faith, pending resolution of such dispute, provided that the University:

- (a) timely renders all payments and amounts that are not in dispute;
- (b) notifies Supplier of the dispute prior to the due date for payment, specifying in such notice:
  - (i) the amount in dispute; and
  - (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Supplier and resolution by the parties;
- (c) works with Supplier in good faith to resolve the dispute promptly; and
- (d) promptly pays any amount determined to be payable by resolution of the dispute.

Supplier shall not withhold or delay any Services or fail to perform any other services or obligations hereunder by reason of the University's good faith withholding of any payment or amount in accordance with this **Section 12.7** or any dispute arising therefrom.

12.8 Right of Set-off. Without prejudice to any other right or remedy it may have, the University reserves the right to set off at any time any amount then due and owing to it by Supplier against any amount payable by the University to Supplier.

### 13. University Data.

13.1 Ownership. The University's data includes any and all data collected, used, processed, stored, or generated in connection with the Services that originates from the University, its Administrative Users, or End Users, including any User Data (collectively, "**University Data**"). University Data is and will remain the sole and exclusive property of the University and all right, title, and interest in the same is reserved by the University. This **Section 13.1** survives termination or expiration of this Agreement.





13.2 Supplier Use of University Data. At all times, University Data will be treated as Confidential Information. Supplier is provided a limited license to University Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display University Data only to the extent necessary in the provision of the Services. Supplier must: (a) keep and maintain University Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose University Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, the Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available University Data for Supplier's own purposes or for the benefit of anyone other than the University without the University's prior written consent. This **Section 13.2** survives termination or expiration of this Agreement.

13.3 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Supplier that compromises or is suspected to compromise the security or confidentiality of University Data or the physical, technical, administrative, or organizational safeguards put in place by Supplier that relate to the protection of the security and confidentiality of University Data, Supplier must, as applicable: (a) notify the University as soon as practicable but no later than forty-eight (48) hours of becoming aware of such occurrence; (b) cooperate with the University in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the University; (c) in the case of personally identifiable information ("PII"), at the University's sole election, (i) with approval and assistance from the University, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law; or (ii) reimburse the University for any costs in notifying the affected individuals; (d) in the case of PII, and if required by law, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the University in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Supplier's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless the University 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 University in connection with the occurrence; (h) be responsible for recreating lost University Data in the manner and on the schedule set by the University without charge to the University; and (i) provide to the University a detailed plan within ten (10) calendar days of the occurrence describing the measures Supplier will undertake to prevent a future occurrence. The University will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the University in writing prior to its dissemination. This **Section 13.3** survives termination or expiration of this Agreement.





**14. FERPA Compliance.** University is a qualifying educational agency or institution under the U.S. Family Educational Rights and Privacy Act ("FERPA"). To the extent Supplier or its personnel have access to data protected by FERPA, Supplier acknowledges that for the purposes of this Agreement it is designated as a "school official" with "legitimate educational interests" in such data and associated metadata, as defined under FERPA and its implementing regulations, and agrees to abide by the limitations and requirements imposed on school officials under those regulations. Supplier agrees to use such data only for the purpose of fulfilling its duties under this Agreement, and will not monitor, share, or disclose any such data to any third party except as provided for in this Agreement, as required by law, or as authorized in writing by University. Supplier specifically agrees not to use any data for purposes of targeted advertising.

**15. ADA Compliance.** The University is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Supplier's Software must comply, where relevant, with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.2.

**16. Data Privacy and Information Security.**

16.1 Undertaking by Supplier. Without limiting Supplier's obligation of confidentiality as further described, Supplier is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of University Data; (b) protect against any anticipated threats or hazards to the security or integrity of the University Data; (c) protect against unauthorized disclosure, access to, or use of University Data; (d) ensure the proper disposal of University Data; and (e) ensure that all Supplier Representatives comply with all of the foregoing.

16.2 Acceptable Use Policy. To the extent that Supplier has access to the University's computer system, Supplier must comply with the University's Acceptable Use Policy, see <https://tech.msu.edu/about/guidelines-policies/aup/>. The University reserves the right to terminate Supplier's access to the University's system if a violation occurs.

**17. Confidentiality.**

17.1 Meaning of Confidential Information. The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) in the possession of the University and subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the





receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). Notwithstanding the above, in all cases and for all matters, University Data is deemed to be Confidential Information.

**17.2 Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Supplier's Subcontractor is permissible where (a) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's responsibilities; and (b) Supplier obligates the Subcontractor in a written contract to maintain the University's Confidential Information in confidence. At the University's request, any of the Supplier's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 17.2.**

**17.3 Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

**17.4 Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the University, at the sole election of the University, the immediate termination, without liability to the University, of this Agreement.

**17.5 Surrender of Confidential Information upon Termination.** Upon termination or expiration of this Agreement, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Supplier or the University determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

## **18. Termination**





18.1 Termination for Cause. In addition to any right of termination set forth elsewhere in this Agreement:

(a) The University may terminate this Agreement for cause, in whole or in part, if Supplier: (i) endangers the security of University Systems or University Data; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (iii) breaches any of its material duties or obligations under this Agreement. Any reference to specific breaches being material breaches within this Agreement will not be construed to mean that other breaches are not material.

(b) If the University terminates this Agreement under this **Section 18.1**, the University will issue a termination notice specifying whether Supplier must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Supplier was not in breach of this Agreement, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 18.2**.

(c) The University will only pay for amounts due to Supplier for Services accepted by the University on or before the date of termination, subject to the University's right to set off any amounts owed by the Supplier for the University's reasonable costs in terminating this Agreement. Supplier must promptly reimburse to the University any Fees prepaid by the University prorated to the date of such termination. Further, Supplier must pay all reasonable costs incurred by the University in terminating this Agreement for cause, including administrative costs, attorneys' fees, court costs, and transition costs.

18.2 Termination for Convenience. The University may terminate this Agreement in whole or in part, upon thirty days advance written notice, without penalty and for any reason. The termination notice will specify whether Supplier must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 18.3**. If the University terminates this Agreement for convenience, the University will pay all reasonable costs for University approved Transition Responsibilities, and will forfeit any prepaid fees for the Services (provided such fees do not span more than one calendar year).

18.3 Transition Responsibilities. Upon termination or expiration of this Agreement for any reason, Supplier must, for a period of time specified by the University (not to exceed 90 calendar days; the "**Transition Period**"), provide all reasonable transition assistance requested by the University, to allow for the expired or terminated portion of the Agreement to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the University or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established Fees; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the University or the University's designee; (c) taking all necessary and appropriate steps, or such other action as the University may direct, to preserve, maintain, protect, or return to the University all University Data; and (d) preparing an accurate accounting from which the University and Supplier may reconcile



all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Agreement is automatically extended through the end of the Transition Period.

18.4 Effect of Termination. Upon and after the termination or expiration of this Agreement for any or no reason:

(a) Supplier will be obligated to perform all Transition Responsibilities specified in **Section 18.3**; and

(b) Supplier will (i) return to the University all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the University's Confidential Information; (ii) permanently erase the University's Confidential Information from its computer systems; and (iii) certify in writing to the University that it has complied with the requirements of this **Section 18.4(b)**, in each case to the extent such materials are not required by Supplier for Transition Responsibilities, if any.

## 19. **Supplier Representations and Warranties.**

19.1 Authority. Supplier represents and warrants to the University that:

(a) It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Agreement under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) It has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement, and to perform its contractual obligations;

(c) The execution of this Agreement by its Representative has been duly authorized by all necessary organizational action; and

(d) When executed and delivered by Supplier, this Agreement will constitute the legal, valid, and binding obligation of Supplier, enforceable against Supplier in accordance with its terms.

19.2 Software Representations and Warranties. Supplier further represents and warrants to the University that:

(a) it is the legal and beneficial owner of the entire right, title and interest in and to the Software, including all intellectual property rights relating thereto;

(b) it has, and throughout the license term, will retain the unconditional and irrevocable right, power and authority to grant and perform the license hereunder;

(c) the Software, and the University's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;





(d) neither its grant of the license, nor its performance under this Agreement does or to its knowledge will at any time:

- (i) conflict with or violate any applicable Law;
- (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or
- (iii) require the provision of any payment or other consideration to any third party;

(e) when used by the University or any Authorized User in accordance with this Agreement and the Documentation, the Software or Documentation as delivered or installed by Supplier does not or will not:

- (i) infringe, misappropriate or otherwise violate any intellectual property right or other right of any third party; or
- (ii) fail to comply with any applicable Law;

(f) as provided by Supplier, the Software does not or will not at any time during the license term contain any:

- (i) Harmful Code; or

(g) all Documentation is and will be complete and accurate in all material respects when provided to the University such that at no time during the license term will the Software have any material undocumented feature; and

(h) it will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Agreement.

(i) when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Supplier, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Agreement and the Documentation; and

(j) no Maintenance Release or New Version, when properly installed in accordance with this Agreement, will have a material adverse effect on the functionality or operability of the Software.

19.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS CONTRACT.



## 20. Indemnification.

20.1 General Indemnification. Supplier must defend, indemnify and hold harmless the University, and the University's Board of Trustees, departments, officers, employees, agents, and contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out of or result from: (a) any breach by Supplier (or any of Supplier Personnel, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement; (b) any infringement, misappropriation, or other violation of any intellectual property right of any third party; and (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Supplier or any of Supplier Personnel, or by anyone else for whose acts any of them may be liable).

20.2 Indemnification Procedure. The University will notify Supplier in writing if indemnification is sought; however, failure to do so will not relieve Supplier, except to the extent that Supplier is materially prejudiced. Supplier must, to the satisfaction of the University, demonstrate its financial ability to carry out these obligations. The University is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the University deems necessary. Supplier will not, without the University's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

## 21. Limitations of Liability

21.1 Disclaimer of Damages. NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

21.2 Limitation of Liability. OTHER THAN SUPPLIER'S OBLIGATIONS WITH RESPECT TO THE PROTECTION OF UNIVERISTY DATA, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

## 22. Insurance.

22.1 Unless more specific insurance provisions are specified by the University, Supplier shall, at Supplier's expense and at all times during its performance under this Agreement, obtain and keep in force:





- (a) Commercial general liability insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$2 million annual aggregate);
- (b) Employers Liability with a minimum limit of \$500,000;
- (c) Workers' Compensation to statutory limits as required by the State of Michigan;
- (d) Professional liability/errors and omissions insurance with limits no less than \$1 million, which should include a rider for Cyber Liability insurance coverage.

22.2 Prior to the commencement of Services, Supplier shall provide a certificate of insurance evidencing such insurance, which shall name the Trustees of Michigan State University, where allowable, as an additional insured. Supplier shall provide for notification to the University within at least thirty (30) days prior to expiration or cancellation of such insurance. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.

### 23. Force Majeure

23.1 Force Majeure Events. Subject to **Section 23.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

23.2 University Performance; Termination. In the event of a Force Majeure Event affecting Supplier's performance under this Agreement, the University may suspend its performance hereunder until such time as Supplier resumes performance. The University may terminate this Agreement by written notice to Supplier if a Force Majeure Event affecting Supplier's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the University terminates this Agreement pursuant to the preceding sentence, any date specifically designated for Supplier's performance under this Agreement will automatically be extended for a period up to the duration of the Force Majeure Event.

### 24. Dispute Resolution.





24.1 Unless otherwise specified in the Statement of Work, the parties will endeavor to resolve any Agreement dispute in accordance with **Section 24** (the "**Dispute Resolution Procedure**"). The initiating party will reduce its description of the dispute to writing (including all supporting documentation) and deliver it to the responding party's Project Manager. The responding party's Project Manager must respond in writing within five (5) Business Days. The initiating party has five (5) Business Days to review the response. If after such review resolution cannot be reached, both parties will have an additional five (5) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved within a total of fifteen (15) Business Days, the parties must submit the dispute to the parties' Agreement Administrators. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

24.2 Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' Agreement Administrators, and either Agreement Administrator concludes that resolution is unlikely, or fails to respond within fifteen (15) Business Days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This **Section 24** does not limit the University's right to terminate this Agreement

## 25. General Provisions.

25.1 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

25.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

25.3 Use of the University Name, Logo and Marks. The University acknowledges that Supplier may make public statements regarding the existence of this Agreement, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Supplier will not use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University, or the name of any representative of the University without the prior written permission of the University in each instance.

25.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):





If to Supplier:

[SUPPLIER ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [NAME OF INDIVIDUAL TO RECEIVE NOTICES]

Title: [TITLE OF INDIVIDUAL TO RECEIVE NOTICES]

If to the University:

[UNIVERSITY ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [NAME OF INDIVIDUAL TO RECEIVE NOTICES]

Title: [TITLE OF INDIVIDUAL TO RECEIVE NOTICES]

Notices sent in accordance with this **Section 25.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5<sup>th</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

25.5 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

25.6 Assignment. Supplier may not assign this Agreement, nor any money due or to become due without the prior written consent of the University. Any assignment made without such consent shall be deemed void.

25.7 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

25.8 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party's authorized Representative. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in



this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

25.9 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

25.10 Governing Law. This Agreement is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Agreement are governed by Michigan law, excluding choice-of-law principles.

25.11 Equitable Relief. Each party to this Agreement acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Agreement agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 25.11**.

25.12 Nondiscrimination Under Michigan Law. Pursuant to Section 209 of the Michigan Elliot-Larsen Civil Rights Act and Section 209 of the Michigan Persons with Disabilities Civil Rights Act, in providing services, the Supplier and its contractor(s) agree not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of age, color, familial status, height, marital status, national origin, race, religion, sex, weight, or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

25.13 Exclusion And Debarment. Supplier certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise ineligible for state or Federal program participation. In the event that Supplier becomes debarred, suspended or ineligible from state or Federal program participation, Supplier shall notify MSU in





writing within three (3) business days of such event. To the extent that Supplier will provide services to any MSU medical entity, Supplier hereby represents and warrants that Supplier is not currently, and at no time has been sanctioned, debarred, suspended, or excluded by any state or federally funded healthcare program, including without limitation, Medicare and Medicaid. Supplier agrees to immediately notify MSU of any threatened, proposed, or actual sanctions, debarment action, suspension, or exclusion by or from any state or federally funded health care program during the term of this Agreement.

25.14 Federal Contract Compliance.

(a) **University is an equal opportunity employer and a federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

(b) In accordance with Public Law 115-91 and FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, and Public Law 115-232 and FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, Supplier is prohibited from delivering covered telecommunications equipment as defined in FAR 52.204-25 or covered articles as defined in FAR 52.204-23. Supplier hereby represents and warrants that it will abide by the prohibitions contained in this Section

25.15 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, and its Services under this Agreement, and in the event of change in either Supplier's private interests or Services under this Agreement, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier's knowledge, there exists no actual or potential conflict between a University employee and Supplier.

25.16 Schedules All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:



**Schedule A**

Statement of Work

**Schedule B**

Pricing

25.17 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

25.18 Entire Agreement. This Agreement, including the Statement of Work and other Schedules and Exhibits attached hereto, constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Agreement and those of any Schedule, Exhibit or other document, the following order of precedence governs: (a) first, this Agreement, excluding its Exhibits and Schedules; and (b) second, the Exhibits and Schedules to this Agreement as of the Effective Date. NO TERMS ON SUPPLIER'S INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE UNIVERSITY OR ANY ADMINISTRATIVE USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE UNIVERSITY AND THE ADMINISTRATIVE USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

**MSU**

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Supplier**

By: \_\_\_\_\_





Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_