

MA 18P 23053100000000000165
NEW

State of Maine



Master Agreement

Effective Date: 05/31/23 **Expiration Date:** 12/31/27
Master Agreement Description: eProcurement Solutions and Services

Buyer Information

ext.

Issuer Information

Michelle Fournier 624-8868 ext. Michelle.Fournier@maine.gov

Requestor Information

Michelle Fournier 624-8868 ext. Michelle.Fournier@maine.gov

Agreement Reporting Categories

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID	Vendor Name
VC0000259409	LABYRINTH SOLUTIONS, LLC
	Alias/DBA
	INVENIOLSI

Vendor Address Information
303 WYMAN STREET, SUITE 300

WALTHAM, MA 02451
US

Vendor Contact Information

DIARMAID O'DONOGHUE
978-261-6100 ext.
DODONOGHUE@INVENIOLSI.COM

Commodity Information

Vendor Line #: 1
Vendor Name: LABYRINTH SOLUTIONS, LLC
Commodity Line #: 1
Commodity Code: 20871
Commodity Description: eProcurement Solutions and Services
Commodity Specifications: Master Agreement was awarded to LABYRINTH SOLUTIONS, LLC for eProcurement Solutions and Services, category(ies) awarded can be found in Attachment B: Scope of Work, through the NASPO ValuePoint cooperative purchasing program for the benefit of eligible entities. Initial agreement term is 5 years, with the option to extend to 12/31/32.
Commodity Extended Description: Master Agreement pricing can be found in Attachment C. Pricing Projections do not limit a consumer's ability to negotiate lower pricing. Listed prices are to act as a maximum amount for any State or Agency that enters into an agreement with the vendor for the aforementioned services.

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
Contract Amount	Service Start Date	Service End Date
0.00	05/31/23	12/31/27
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Please see authorized signatures displayed on the next page

Each signatory below represents that the person has the requisite authority to enter into this Contract.
The parties sign and cause this Contract to be executed.

State of Maine - Department of Administrative and Financial Services

DocuSigned by:
David Morris 8/4/2023
2A644AF5681F482...
Signature Date
David Morris, Acting Chief Procurement Officer

LABYRINTH SOLUTIONS, LLC dba INVENIOLSI

DocuSigned by:
Nader Tirandazi 8/3/2023
74B7FCA4702D45A...
Signature Date
Nader Tirandazi CEO

State of Maine - Office of Information Technology

DocuSigned by:
Nicholas Marquis 8/3/2023
A29C99359A37464...
Nicholas Marquis, Interim Chief Information Officer

Master Agreement Number
MA18P 23053100000000000165
for
ePROCUREMENT SOLUTIONS AND SERVICES
between
the State of Maine
and
Labyrinth Solutions, LLC d/b/a invenioLSI

This Master Agreement is entered into by the State of Maine ("Lead State") and the following contractor (each a "Party" and collectively the "Parties") as a result of Solicitation Number RFP 202102021 (the "RFP") for the purpose of providing eProcurement Solutions and Services, limited to the category(ies) awarded to Contractor identified in Attachment B: Statement of Work, through the NASPO ValuePoint cooperative purchasing program:

Labyrinth Solutions, LLC d/b/a invenioLSI ("Contractor")
303 Wyman St. Ste 300
Waltham, MA 02451

MASTER AGREEMENT CONTACTS.

Contractor's contact for this Master Agreement is:

Nader Tirandazi
CEO
ntirandazi@inveniolsi.com
(858) 342-6665

Lead State's contact for this Master Agreement is:

Connor Smith
Procurement Analyst II
Connor.Smith@maine.gov
(207) 441-7695

TERM. This Master Agreement is effective as of the date of the last signature below or 5-31-2023, whichever is later, and will terminate on 12-31-2027 unless terminated sooner or extended or renewed in accordance with the terms set forth herein. Renewals totaling up to 10 (10) years following the initial term may be exercised upon mutual agreement by the Parties.

ATTACHMENTS. This Master Agreement includes the following documents, in descending order of precedence:

- I. Attachments
 - A. Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions
 - B. Attachment B: Scope of Work
 - C. Attachment C: Master Agreement Pricing
- II. Incorporated by referenced but not attached
 - D. The [RFP](#), including the [Requirements Traceability Matrix](#)
 - E. [Contractor's response to the RFP](#), as revised (if permitted) and accepted by the Lead State

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SIGNATURE. The undersigned for each Party represents and warrants that this Master Agreement is a valid and legal agreement binding on the Party and enforceable in accordance with the Master Agreement's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Master Agreement and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Master Agreement.

CONTRACTOR:

DocuSigned by:

Nader Tirandazi

74B7FCA4793D4FA...

Signature

Nader Tirandazi

Printed Name

CEO

Title

8/3/2023

Date

LEAD STATE:

DocuSigned by:

David Morris

2A644AF5681F482...

Signature

David Morris

Printed Name

Acting Chief Procurement Of

Title

8/4/2023

Date

LEAD STATE CIO APPROVAL:

DocuSigned by:

Nicholas Marquis

A29C99359A37464...

Signature

Nicholas Marquis

Printed Name

Interim CIO

Title

8/3/2023

Date

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Attachment A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

I. Definitions

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 Partner Managed Cloud Contracting Documents:** Cloud Software and Hosting Terms and Conditions that include Exhibit 1-4.
- 1.13 Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

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- 1.14 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- 1.15 Statement of Work** means a written document setting forth the scope of work being provided by Contractor, project deliverables, assignments, timelines, workplace logistics, and payment terms and conditions as it relates to each Order.

II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for five (5) years. The term of this Master Agreement may be amended beyond the initial term for ten (10) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity's Participating Addendum ("PA");
 - 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 3.1.3** A Purchase Order or Statement of Work/Specifications issued against the Master Agreement;
- 3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

- 4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

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- 4.2 Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.
- 4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

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- 4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

- 5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.
- 5.2 Administrative Fees**
- 5.2.1 NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) of Orders invoiced in the calendar quarter no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.
- 5.2.2 State Imposed Fees.** Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.
- 5.3 NASPO ValuePoint Summary and Detailed Usage Reports**
- 5.3.1 Sales Data Reporting.** In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

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- 5.3.2 Summary Sales Data.** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- 5.3.3 Detailed Sales Data.** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- 5.3.4 Sales Data Crosswalks.** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.
- 5.3.5 Executive Summary.** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

- 5.4.1 Staff Education.** Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor’s contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.
- 5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor’s website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.
- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at

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the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Use of Contractor Name and Logo.** NASPO ValuePoint, the Lead State, and Participating Entities may not, without Contractor's prior written consent, use Contractor's name, trade name, trademarks, acronym, or logo for any purpose other than to advertise the Master Agreement in publications and promotional materials.
- 5.4.6 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

5.6 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

5.7 Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VI. Pricing, Payment & Leasing

6.1 Pricing. The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.

- 6.1.1** All prices and rates must be guaranteed for the initial term of the Master Agreement.
- 6.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least sixty (60) days prior to the effective date.

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6.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

6.1.4 No retroactive adjustments to prices or rates will be allowed.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

7.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

7.3 Applicable Rules. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

7.4 Required Documentation. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

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- 7.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
- 7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 7.6 **Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
 - 7.6.1 The services or supplies being delivered;
 - 7.6.2 A shipping address and other delivery requirements, if any;
 - 7.6.3 A billing address;
 - 7.6.4 Purchasing Entity contact information;
 - 7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
 - 7.6.6 A not-to-exceed total for the products or services being ordered; and
 - 7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 7.7 **Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- 7.8 **Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VIII. Reserved

IX. Inspection and Acceptance

- 9.1 **Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 **Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to

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monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

- 9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use.
 - 9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 9.4 **Failure to Conform.** If any services do not conform with written specifications agreed upon by Purchasing Entity and Contractor, the Purchasing Entity may require the Contractor to perform the services again in conformity with written specifications, at no increase in Order amount. When non-conformance cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms with the written specifications and cancel, and be refunded any amounts paid for, that portion of the Order to reflect the reduced value of services performed.
- 9.5 **Acceptance Testing.** Purchasing Entity and Contractor may establish a mutually agreed upon process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
 - 9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.
 - 9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, or does not meet the mutually agreed upon acceptance criteria established during the initial Explore phase of the project, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.
 - 9.5.3 Upon notification of rejection, the Contractor will have five (5) calendar days to propose and establish a cure plan in collaboration with the Purchasing Entity. The cure plan is subject to Purchasing Entity approval and will allow Contractor fifteen (15) calendar days to cure all defects unless a longer period is agreed to by the Purchasing Entity. If after the cure period specified in the plan the Product still has not met the standard of performance, specifications, or acceptance criteria for the deliverable established during the Explore phase of the project, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
 - 9.5.4 The Purchasing Entity shall not unreasonably delay final acceptance of a deliverable that has met the deliverable's previously established acceptance criteria. Any change made to acceptance criteria prior to Purchasing Entity's acceptance must be documented in writing.
 - 9.5.5 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

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9.5.6 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

- 10.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.
- 10.2 Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.
- 10.3 Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 10.4 Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 10.5 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

- 11.1 Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 11.2 Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 11.3 License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, perform, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

- 12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, awarded damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

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- 12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, awarded damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").
- 12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - 12.2.1.2** specified by the Contractor to work with the Product;
 - 12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - 12.2.1.4** reasonably expected to be used in combination with the Product.
- 12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.
- 12.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

- 13.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.
- 13.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

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- 13.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
 - 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- 13.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- 13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 13.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

- 14.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the

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Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

14.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

14.1.2.1 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State

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immediately if Contractor 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 Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 Injunctive Relief. Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

14.2.4 Purchasing Entity Law. These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

14.2.5 NASPO ValuePoint. The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 Public Information. This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State. This section does not preclude Contractor from subcontracting and using the services of subcontractors for the performance of portions of this Master Agreement, including without limitation the provision of Cloud Services, Consulting Services and any other services under this Master Agreement, provided that Contractor shall remain responsible for breaches of this Master Agreement caused by its subcontractors. Upon request by the Lead State, a Participating Entity, or Purchasing Entity, Contractor shall provide to the requesting entity a list of all subcontractors being

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utilized under, as applicable, this Master Agreement, a Participating Addendum, or Order. Nothing contained in this section shall create any contractual relationship between any of Contractor's subcontractors and the Lead State, Participating Entities, or Purchasing Entities.

14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

14.4 Changes in Contractor Representation. The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either Party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

14.7 Force Majeure. Neither Party to this Master Agreement shall be held responsible for delay or default caused by one or more of the following events, if such occurrence or continuation of an occurrence is beyond the party's reasonable control and substantially inhibits the party's ability to deliver Product or other deliverables in accordance with this Master Agreement: fire, riot, unusually severe weather, other acts of God, acts of war or terrorism, and restrictions on the movement of people or goods imposed in a public health order or by a declared state of emergency. The Lead State may terminate this Master Agreement without penalty to Contractor upon determining such delay or default will reasonably prevent successful performance of the Master Agreement. A Force Majeure event does not include an act of negligence or intentional wrongdoing by a Party.

14.8 Defaults and Remedies

14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

14.8.1.1 Nonperformance of contractual requirements by either Party;

14.8.1.2 A material breach of any term or condition of this Master Agreement;

14.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

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- 14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - 14.8.1.5 Any default specified in another section of this Master Agreement.
- 14.8.2 Upon the occurrence of an event of default, the non-breaching Party shall issue a written notice of default, identifying the nature of the default, and providing a period of thirty (30) calendar days in which the breaching Party shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages to the extent provided for under this Master Agreement.
- 14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
 - 14.8.3.1 Any remedy provided by law;
 - 14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;
 - 14.8.3.3 [Intentionally omitted];
 - 14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;
 - 14.8.3.5 Suspension of Contractor's performance; and
 - 14.8.3.6 Withholding of payment until the default is remedied.
- 14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a non-defaulting Party shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a non-defaulting Party shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. At the Purchasing Entity's sole election, the 30-day cure period will **not** apply to termination for default by Contractor or for any material breach by Contractor of Section 14.3 Assignments/Subcontracts or Contractor's data and security obligations under an executed Statement of Work, in which case, the Purchasing Entity shall provide the sooner effective date of termination in its notice to Contractor, including without limitation immediate termination, and the Purchasing Entity shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

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- 14.9 Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.
- 14.10 Termination for Non-Appropriations.** A Purchasing Entity shall promptly notify Contractor if, in its sole judgement, Purchasing Entity will not be appropriated funding sufficient to cover any future financial commitment under this Master Agreement. Nothing in this section shall excuse a Purchasing Entity from making payment on a correct invoice for accepted Products and services.
- 14.11 Debarment.** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.
- 14.12 No Waiver of Sovereign Immunity**
- 14.12.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 14.12.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
- 14.13 Governing Law and Venue**
- 14.13.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.
- 14.13.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

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14.13.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

14.14 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

14.15 Survivability. Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

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Attachment B:
SCOPE OF WORK

I. Overview

This Master Agreement is executed by the Lead State in collaboration with the NASPO ValuePoint cooperative purchasing program for the benefit of eligible entities, including state departments, institutions, agencies, and political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories. This and other Master Agreements in the eProcurement Solutions and Services portfolio are intended to provide a diverse menu of solutions and services within multiple purchasing models.

II. Awarded Scope

Contractor has been awarded the following categories and combination(s) of software solution(s) and/or services, to which the scope of this Master Agreement is limited:

	Software System	Service Provider
Category 1: Software & Services		
Full Solution	SAP Ariba	invenioLSI
Category 2: Software & Services by Workstream		
Supplier Portal	SAP Ariba	invenioLSI
Supplier Enablement	SAP Ariba	invenioLSI
Buyer Portal	SAP Ariba	invenioLSI
Need Identification	SAP Ariba	invenioLSI
Request through Pay	SAP Ariba	invenioLSI
Catalog Capability	SAP Ariba	invenioLSI
Sourcing/Bid Management	SAP Ariba	invenioLSI
Contract Management	SAP Ariba	invenioLSI
Vendor Performance	SAP Ariba	invenioLSI
Purchasing/Data Analytics	SAP Ariba	invenioLSI
Category 3: Software Only by Workstream		
Supplier Portal	SAP Ariba	
Supplier Enablement	SAP Ariba	
Buyer Portal	SAP Ariba	
Need Identification	SAP Ariba	
Request through Pay	SAP Ariba	
Catalog Capability	SAP Ariba	
Sourcing/Bid Management	SAP Ariba	
Contract Management	SAP Ariba	
Vendor Performance	SAP Ariba	
Purchasing/Data Analytics	SAP Ariba	
Category 4: Services Only (software system(s) serviced in parentheses)		
Implementation Services		

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Managed Services		
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III. Category Descriptions

This section briefly describes the scope of each category awarded to Contractor. Contractor may or may not offer all products and services described in each category. The Products and Services offered by Contractor within each category are identified and described in Contractor's response to the RFP. All Products and Services shall comply with the requirements set forth in the RFP and in this Master Agreement and shall perform as required in the RFP and this Master Agreement and as represented in Contractor's response to the RFP. Participating Addenda may include Contractor's Products and Services in whole or in part and may specify additional Participating Entity-specific requirements.

- 3.1 Category 1: Full Solution.** Implementation of a comprehensive eProcurement Solution, including all workstreams and services described in Sections IV and V and meeting the requirements detailed in the RFP and in the Requirements Traceability Matrix, including licensing and maintenance, implementation and deployment, and ongoing operations and support. This category includes both software and services.
- 3.2 Category 2: Individual Workstream Implementation.** Implementation of eProcurement functionality for one or more workstreams and services described in Sections IV and V and meeting the requirements detailed in the RFP and in the applicable sections of the Requirements Traceability Matrix, including licensing and maintenance, implementation and deployment, and ongoing operations and support. This category includes both software and services.
- 3.3 Category 3: eSoftware Only.** Provision of an eProcurement software solution for one or more workstreams described in Section IV and meeting the requirements detailed in the RFP and in the applicable sections of the Requirements Traceability Matrix, including licensing and maintenance. This category excludes services.
- 3.4 Category 4: Services Only.** Provision of one or more services described and meeting the requirements in Section V and meeting the requirements detailed in the RFP and the applicable sections of the Requirements Traceability Matrix, including implementation and deployment and ongoing operations and support. This category excludes software.

IV. Workstream Descriptions

This section briefly describes each workstream included in the categories described in Section III. Contractor may or may not offer all products and services described in each workstream. The Products and Services offered by Contractor within each workstream are identified and described in Contractor's response to the RFP. All Products and Services shall comply with the requirements set forth in the RFP and in this Master Agreement and shall perform as required in the RFP and this Master Agreement and as represented in Contractor's response to the RFP. Participating Addenda may include Contractor's Products and Services in whole or in part and may specify additional Participating Entity-specific requirements.

4.1 Supplier Portal

- 4.1.1** The Supplier Portal functionality must provide a single point of entry 'front door' that includes all supplier facing functions for the electronic procurement solution with the ability to also incorporate access to other applications or services such as certifications, invoicing and online interactions with the Participating Entity or Purchasing Entity. The Supplier Portal functionality must deliver valuable content upon logging in and be personalized to the supplier and the supplier user logged into the system.

4.2 Supplier Enablement/Management

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- 4.2.1 The Supplier Enablement/Management component, in conjunction with the Supplier Portal, must support all procurement activities and provide suppliers the ability to establish and maintain an account defining who they are and what they sell along with other key data elements required by the Participating Entity or Purchasing Entity to procure from and pay the supplier. Suppliers will use this account to access all relevant electronic procurement and financial functionalities such as solicitations, solicitation response, order receipts, contract awards, load sales reports, and submit invoices.
- 4.2.2 This functionality should also provide capabilities to establish and maintain pre-qualified suppliers lists for bidding on specific categories of goods/services.
- 4.2.3 Integration may be required with the Participating Entity or Purchasing Entity finance system to establish and maintain supplier payee records needed for accounts payable (A/P) processing.
- 4.3 **Buyer Portal**
 - 4.3.1 The Buyer Portal component of the system must provide functionality that acts as a personalized single point of entry ("front door") to initiate the full life cycle of procurement activities for Participating Entity and Purchasing Entity users. The Buyer Portal must deliver valuable content unique to the user once logged in.
- 4.4 **Need Identification**
 - 4.4.1 The Need Identification component of the system provides functionality for a user to initiate any type of procurement action with configurable business rules to support Purchasing Entities' custom business needs. The user interface must be user-friendly, intuitive, flexible, and adaptable to support users.
- 4.5 **Request through Pay**
 - 4.5.1 The purchase Request through Pay component of the systems provide functionality to automate the ordering process from the end-user purchase request through authorizing payment for the resulting order. Key components include:
 - 4.5.1.1 Purchase request;
 - 4.5.1.2 Catalog shopping to drive spend to existing contracts;
 - 4.5.1.3 Access to external retail marketplaces products;
 - 4.5.1.4 Intelligent workflow engine to apply entity and enterprise-wide business rules;
 - 4.5.1.5 Online approvals;
 - 4.5.1.6 Electronic order dispatch;
 - 4.5.1.7 Receiving;
 - 4.5.1.8 Electronic and paper invoicing;
 - 4.5.1.9 Invoice matching for payment authorization;
 - 4.5.1.10 3-way match for payment authorization; and
 - 4.5.1.11 Integration with finance system.
 - 4.5.2 The solution must also provide the capability to support the procurement of services from pre-established services contracts (e.g., Professional Services, Contingent Labor, Healthcare Services) that may include characteristics such as deliverable-based fee services. This specialized type of purchasing would need functionality to address scope/need definition (e.g., SOW), contract supplier submission of quotes with attachments (e.g., resumes, specifications), quote evaluation/selection, order generation and receiving concepts such as recording of timesheets, deliverables acceptance, milestone completions, and expenses.

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4.6 Catalog Capability

- 4.6.1** The Catalog components of the system provide the functionality to maintain contract/non-contract catalogs in the shopping component of the system as described in Section 4.5 (Request through Pay). Catalog content can be hosted within the system or made available by 'punching out' to the supplier's shopping website. Contract catalogs must be capable of being automatically generated as part of the award process through integration with the Sourcing and the Contract Management component of the system. Maintenance of contract catalog content throughout the life of the contract/agreement must be available through integration with the Contract Management component of the system.
- 4.6.2** Other key components include utilities for suppliers to setup, manage and maintain their catalogs. User access to these utilities should be controlled through definition and assignment of roles. Workflow functionality should also be available to automate authorized Participating Entity and Purchasing Entity user review and approval of catalog content before it is made available.
- 4.6.3** The solution must provide an open marketplace environment that provides access to the aforementioned catalog components and to other non-contract, external internet retail or commercial markets of goods/services, as authorized by the Participating Entity or Purchasing Entity. This environment provides the buyer with a supported "catalog of catalogs" shopping experience with a single view of all sources as described in Section 4.5 (Request through Pay). The objective of this experience is to give the user options to make the best possible purchasing decision that optimizes price, quality, terms/conditions, and policies. A key aspect of the open marketplace environment is that it will allow the Participating Entity or Purchasing Entity to effectively manage spend.
- 4.6.4** Support and maintenance of the open marketplace that supports the Participating Entity or Purchasing Entity in the overall management of the open marketplace environment inclusive of: integrations with online suppliers; regular (or real time) synchronization of products, prices for items in the catalog; available products and services; establishment of contracted suppliers within the marketplace as well as the overall management, maintenance and operations of the technical elements that comprise this "catalog of catalogs" environment as to comply with Participating Entity or Purchasing Entity operating, service level, and performance requirements.
- 4.6.5** Contractor must provide continuous support of both suppliers with contracts and non-contract suppliers offering goods and services in the open marketplace environment. Contractor should also provide ongoing support functions to continuously and proactively expand the open marketplace environment ecosystem with additional non-contract and retail/commercial market products and services.

4.7 Sourcing/Bid Management

- 4.7.1** The Sourcing components of the system provide functionality to automate the entire solicitation process for both the buyer and the supplier. All types of solicitations can be created leveraging standard templates and libraries. Formal or informal, sealed or unsealed, complex or simple. Other key functionalities include initiating solicitations from a requisition, public posting, supplier notification, evaluation of bids/proposals, making the award and the Integration with other solution components to automate the creation of catalogs and contracts.

4.8 Contract Management

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- 4.8.1** The Contract Management components of the Solution encompass all aspects of contract development, tracking, electronic signature, and administration. Contract document authoring is automated through templates and libraries to provide consistency across the Participating Entity or Purchasing Entity. Workflow functionality provides oversight by automating the review and approval processes.
- 4.8.2** Key contract administration functions address management of subcontractors, identification of authorized resellers (dealers, distributors, etc.), tracking and managing supplier sales reports, contractor performance and compliance, and amendments and renewals.

4.9 Vendor Performance

- 4.9.1** Vendor Performance management is a business practice that is used to measure, analyze, and manage the performance of a supplier in an effort to cut costs, alleviate risks, and drive continuous improvement. The ultimate intent is to identify potential issues/risks and their root causes so that they can be resolved/managed to all parties benefit as early as possible. The electronic procurement Vendor Performance functionality must capture vendor performance information and data including, but not limited to, delivery dates, receipt dates, pricing accuracy, cure letters, contract milestone completion, and customer surveys. The data must be collected in a manner that allows for reporting and analysis. The solution will provide the Participating Entity or Purchasing Entity with a means to assess, track, manage and report supplier performance across all procurement activities and include capabilities to capture and address performance complaints/issues.

4.10 Purchasing/Data Analytics

- 4.10.1** Purchasing/Data Analytic components of the system provide robust data analytics and reporting to allow the Participating Entity or Purchasing Entity to strategically assess procurement transactions and records for more effective sourcing and contracting, to include spend. These functionalities also provide the means to assess across operation dimensions such as supplier classification, organizational elements and buying trends. Reporting is presented in the form of interactive charts and dashboards with the ability to "drill down" to the transactional data for comprehensive analysis. Transparency is also a key feature to this component as reports, charts and dashboards can be designed for public access.

V. Service Descriptions

This section briefly describes each service included in the categories described in Section III. Contractor may or may not offer all services described below. The Services offered by Contractor are identified and described in Contractor's response to the RFP. All Services shall comply with the requirements set forth in the RFP and in this Master Agreement and shall be performed as required in the RFP and this Master Agreement and as represented in Contractor's response to the RFP. Participating Addenda may include Contractor's Services in whole or in part and may specify additional Participating Entity-specific requirements.

5.1 Implementation Services

- 5.1.1** Implementation services may include one or more of the following:
 - 5.1.1.1** Project management;
 - 5.1.1.2** Project implementation;
 - 5.1.1.3** Catalog support services;
 - 5.1.1.4** Data conversion services;
 - 5.1.1.5** Interface/integration development services;

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- 5.1.1.6** Organizational change management (OCM) services;
- 5.1.1.7** Training services;
- 5.1.1.8** Help desk services; and
- 5.1.1.9** On-site system stabilization support

5.2 Managed Services

5.2.1 Managed services may include one or more of the following:

- 5.2.1.1** Solution support;
- 5.2.1.2** Organizational change management (OCM) services;
- 5.2.1.3** Training services;
- 5.2.1.4** Catalog support services;
- 5.2.1.5** Help desk services; and
- 5.2.1.6** Transition out assistance services

5.3 Other Services

5.3.1 Contractor may also offer other related services as identified and described in Contractor's response to the RFP.

VI. Sample Partner Managed Cloud Contracting Agreements

- 6.1** The following documents are being provided for **informational purposes only**. They are intended to be negotiated and executed by Contractor and Purchasing Entities as part of an Order. Unless expressly accepted in writing by the Purchasing Entity, terms in the following documents that derogate the application of a corresponding term in this Master Agreement or applicable Participating Addendum to the Purchasing Entity shall be deemed void.



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

This invenioLSI Cloud Services Agreement ("Agreement") is made this **XXX** day of **XXX**, 20**XX**, by and between **Labyrinth Solutions LLC d/b/a invenioLSI** ("Contractor" or "LSI"), located at 303 Wyman Street Suite 300, Waltham MA 02451 and **XXXXX** ("Customer"), located at **XXXX**.

The Agreement is governed by and incorporates the following documents, listed in order of precedence, and collectively hereinafter referred to as the "**Agreement**":

SECTION	DOCUMENT
1.	invenioLSI CLOUD SERVICES AGREEMENT
2.	ORDER FORM for invenioLSI Cloud Services
3.	Cloud Services Service Level Agreement & Support Policy
4.	Data Processing Agreement for invenioLSI Cloud Services
5.	Statement of Work (SOW)

RECITALS

I. WHEREAS, the Customer wishes for Contractor to provide the Customer with access to SAP **XXXX** software as a Cloud Application (as defined below) and other services as detailed in this Agreement (as defined below); and

II. WHEREAS, the Customer issued Request for Proposals number **XXXX** (the "RFP") on **<RFP DATE>** seeking proposals for the adoption of an online-based **financial and budget management** system; and

III. WHEREAS, Contractor submitted a written proposal in response to the RFP ("Contractor's RFP Proposal") proposing the implementation and hosting of SAP's **XXXX** Cloud Hosted Application (as defined below) to meet the Customer's needs under the RFP; and

IV. WHEREAS, the Customer selected invenioLSI, as the highest qualified scorer pursuant to the RFP; and

V. WHEREAS, Contractor represents that it is qualified to provide the Cloud Services and other services as set forth in this Agreement to the Customer.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

Article 1 DEFINITIONS.

1. "**Authorized User**" means a person authorized by Customer to access the Contractor's Website and utilize the Cloud Application and Cloud Services under this Agreement, including any Customer employee, contractor or agent so authorized by Customer.
2. "**Backup Environment**" means the Contractor's backup Data Center (as defined herein) for the Cloud Application and Customer Data (as defined herein).
3. "**Cloud**" means something, such as a software application, that is hosted online. "Cloud" refers to an online-hosted computer software application (or applications) accessed and used by Authorized Users via the Internet.



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

4. **"Cloud Application"** means the proprietary online-hosted computer software program or programs licensed from LSI and LSI-licensed Third-Party Software (as defined below) residing on Contractor's servers or Subcontractors' (as defined below) servers, through which Contractor provides the Cloud Services to be accessed and utilized by the Customer's Authorized Users through the Internet pursuant to this Agreement. The Cloud Application includes without limitation the Cloud programs and modules listed in Paragraph 1.1 ("Cloud Service Order") of the SECTION 2 Order Form, including all corrections, patches, fixes, updates, modifications and upgrades thereto, as well as all related materials and Documentation. The Cloud Application is further detailed in SECTION 4 herein.
5. **"Cloud Application Maintenance Services"** has the meaning as provided in SECTION 4 ("Cloud Application, Data Centers and Maintenance").
6. **"Cloud Service(s)"** means the provision by Contractor to Customer, via Contractor's Cloud Application, of the functionalities as provided for in the Specifications (as defined herein).
7. **"Cloud Software"** has the same meaning as Cloud Application herein.
8. **"Confidential Information"** has the meaning provided in Article 14 ("Data and Security") herein.
9. **"Contractor Project Manager"** means the individual specified by Contractor pursuant to Section 6.1 ("Project Managers") herein, as the Project Manager authorized to administer this Agreement on Contractor's behalf.
10. **"Contractor's RFP Proposal"** shall have the meaning provided in the Recitals section herein. A copy of LSI's RFP Proposal is incorporated into this Agreement and attached hereto as Attachment 1.
11. **"Contractor's Website"** means the Website through which it provides Authorized Users access to the Cloud Services.
12. **"Customer Data"** has the same meaning as "Customer Data" (as defined herein). Wherever the term "Customer Data" is used anywhere in the Agreement, it is hereby replaced with the term "Customer Data."
13. **"Data Center"** means a physical location in the United States where the Contractor (or its Subcontractor) houses and operates the hardware (including servers, routers, and other related equipment) on which Contractor (or its Subcontractor) hosts on the Internet the Cloud Application and Customer Data pursuant to this Agreement. The locations of the Data Centers to be used hereunder are provided in SECTION 4 ("Cloud Application, Data Centers and Maintenance") herein.
14. **"Data Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data (as defined herein). The Customer is considered a Data Controller under this Agreement for the purposes of detailing the roles and responsibilities of the Parties hereunder, including without limitation under SECTION 4.
15. **"Data Processor"** means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller. The Contractor is considered a Data



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

Processor under this Agreement for the purposes of detailing the roles and responsibilities of the Parties hereunder, including without limitation under SECTION 4 ("Data Processing Agreement for LSI Cloud Services).

16. **"Data Subject"** means an identified or identifiable natural person.
17. **"Development Environment"** means a collection of hardware and software tools and services developers use to build software applications, services, and systems.
18. **"Customer Data"** means all content, materials, data and information imported or otherwise inputted into, gathered by, processed by, stored in, generated by, transmitted by, and/or displayed via, the Cloud Application, including without limitation as the result of the use of the Cloud Services in the performance of this Agreement by Customer's Authorized Users, and which data may include without limitation Customer employee data and student data including without limitation Personal Data (as defined herein) or that Customer derives from its use of and stores in the Cloud Application (e.g. Customer-specific reports). Customer Data is Confidential Information of the Customer under Article 14 ("Data and Security") herein. Customer Data and its derivatives do not include Contractor's Confidential Information.
19. **"Customer's Project Manager"** means the individual specified by the Customer pursuant to Section 6.1 ("Project Managers") herein, as the Project Manager authorized to administer this Agreement on the Customer's behalf.
20. **"Documentation"** means any LSI created documentation relating to the Cloud Application and the Cloud Services and their use, functionalities and operation, including without limitation reference, administrative, maintenance, technical and programmer manuals and materials, provided in any form or media, including without limitation via the Cloud Application.
21. **"End User"** shall have the same meaning as Authorized User.
22. **"Internet"** means that certain global network of computers and devices commonly referred to as the "Internet" or "internet," including (without limitation) the World Wide Web.
23. **"Landscape Sizing"** has the meaning as referenced in detail under *Appendix 1 Landscape Sizing* to the SECTION 2 Order Form.
24. **"LSI Policies"** means the operational guidelines and policies applied by Contractor to provide and support the Cloud Service as incorporated, and as expressly designated as an "LSI Policy," in the Order Form.
25. **"Online"** and **"online"** shall mean that the item so described is accessible and available via the Internet.
26. **"Order Form"** means the "Order Form for LSI Cloud Services LSI Reference No. CUSTOMER-001" executed by the Parties (the "Order Form").
27. **"Party"** and **"Parties"** mean the Customer and Contractor either collectively or individually, as applicable given the context in which the term is used.
28. **"Personal Data"** means any information relating to a Data Subject. For the purposes of this Agreement, Personal Data includes only personal data entered by Customer or its Authorized



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Users into, or derived from their use of, the Cloud Service. It also includes personal data supplied to or accessed by Contractor and Subcontractors (including without limitation Sub processors under "Personal Data Processing Agreement for LSI Cloud Services") in order to provide support under the Agreement. Personal Data is a subset of Customer Data and of Confidential Information of the Customer under the Agreement.

29. **"Production Environment"** means a collection of hardware and software tools and services put into operation for their intended use by end users.
30. **"Security Breach"** means any access, destruction, loss, theft, use, modification or disclosure of Customer Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable state or federal law.
31. **"Services"** and **"services"** means all services provided by Contractor under this Agreement including the Cloud Services, support services, service level agreement obligations, maintenance services, and all labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.
32. **"Specifications"** means all specifications, descriptions, functionalities, capabilities, features, standards, criteria and requirements of the Cloud Application and Cloud Services as provided in the following (in order from highest to lowest precedence): this Agreement, Contractor's RFP Proposal, and the Documentation.
33. **"Successor Service Provider"** means a new service provider, if any, selected by Customer in the event the Cloud Services are terminated under this Agreement.
34. **"Support"** has the meaning provided in SECTION 4 ("Cloud Application, Data Centers and Maintenance") herein.
35. **"Test Environment"** means a collection of hardware and software tools and services developers use to validate, test, and debug software applications, services, systems, and data.
36. **"Third-Party Software"** has the meaning provided in SECTION 4 ("Cloud Application, Data Centers and Maintenance") herein.
37. **"Transition Services"** means that assistance reasonably requested by Customer to carry-out the orderly transition of the Cloud Services, in whole or in part, to Customer or to Successor Service Provider.
38. **"Usage Metric" and "Usage Metric limitations"** shall have the meaning as set-forth in Paragraph 1.1 of SECTION 2 ("Cloud Service Order Form")
39. **"Web"** or **"web"** shall have the same meaning as "Internet" as defined herein.
40. **"Website"** or **"website"** shall mean a specific site on the Internet.

Article 2

ORDER OF PRECEDENCE; SUBSCRIPTION TERM; TERM; RENEWALS; EFFECTIVE DATE.

2.1 **Order of Precedence.** The Agreement consists of the Order Form for Cloud Services and the body of this Agreement, including its Exhibits, Attachments and Appendices. All parts of the



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Agreement are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document. In the event of any conflict, discrepancy, error or omission among any parts of the Agreement, either Party shall immediately notify the other Party and both Parties shall decide how to remedy such conflict, discrepancy, error or omission. If the Parties cannot resolve any such conflict, discrepancy, error or omission by agreement, the matter shall be submitted for resolution in accordance with Article 13., Section 13.4. Subject to the preceding three sentences, the parts of the Agreement should take the following order of precedence:

1. invenioLSI CLOUD SERVICES AGREEMENT
2. ORDER FORM for invenioLSI Cloud Services
3. Service Level Agreement for invenioLSI Cloud Services
- 4a. Data Processing Agreement for invenioLSI Cloud Services
- 4b. Personal Data Processing Agreement for invenioLSI Cloud Services
5. Statement of Work (SOW)

2.2 Subscription Term; Term.

2.2.1 Subscription Terms. The Subscription Term is as stated in the Order Form and the Subscription Term remains in full force and effect, until it expires or is terminated in accordance with the Agreement. The Subscription Term will begin on the start date specified in the Order Form and will be effective until the end date specified in the Order Form, unless Customer is otherwise notified by LSI's provisioning team.

2.2.2 Term of Agreement. Unless otherwise terminated in accordance with the Agreement, the Agreement will remain in full force and effect from the Effective Date of this Agreement until thirty-six (36) months after the termination or expiration date of the last Order Form between the parties.

2.3 **Renewals.** Unless the Order Form or a Supplement states otherwise, the Subscription Term and any renewals and extensions will automatically renew for terms equal in length to the immediately preceding term (if that term is thirty-six months or less) or for one year (if that term is longer than thirty-six months). Auto-renewal will not occur if Customer notifies LSI, in writing (via email is acceptable), of Customer's intention not to renew at least thirty (30) days in advance of the expiration of the then-current term, or LSI notifies Customer, in writing (via email is acceptable), of its intention not to renew at least six (6) months prior to the expiration of the then-current term. If Customer or LSI, as applicable, fail to so notify the other party in writing within the period required in this Section 2.4 (or such other period, if any, as stipulated in a Supplement) then the Subscription Term of the Order Form will renew for the appropriate period.

2.4 **Effective Date.** The Agreement will be effective as of the date upon which it is fully executed by the authorized representatives of the parties and approved by the Customer's Board of **XXXX**, such date being the date set forth in the opening paragraph of the Agreement above (the "Effective Date").

Article 3 FEES AND PAYMENT; TAXES.

3.1 Fees and Payment.

Payment. Compensation to Contractor shall be as provided for in Section 1.1 ("Cloud Service Order") of the Order Form, with payment of the fees listed therein made by Customer upon renewal of the contract on an annual basis from the start of the initial term as detailed therein. Fees for the Cloud Services (Software and Hosting) will be invoiced by LSI and prepaid by Customer annually in advance. Customer will pay LSI year 1 Cloud Services upon Customer contract signing. Contractor shall provide an invoice to the Customer for payment under this Agreement, but not more than fifteen (15) days prior to the annual start date. Payment shall be made within thirty (30) days of receipt of the invoice. In no event shall the total amount of this Agreement exceed (\$7,093,334.00) seven million ninety-three thousand three hundred thirty-four dollars and no cents except pursuant to a written modification of this Agreement. In no event shall Customer be liable for interest or late charges for any late payments.



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3.2 REFUND OF PREPAID ORDER FORM FEES UPON TERMINATION

3.2.1 Upon termination of the services for lack of appropriation, as set-forth in the Agreement, LSI shall provide appropriate transition services, including temporary hosting to ensure business continuity. In addition, the Customer shall be entitled to a pro-rata refund of sums remaining on the prepaid multi-year contract, calculated against the number of service months remaining at the time of termination. The refund shall be offset on a similar pro-rata basis by the up-front contract discount of \$150,000, negotiated in good faith by the parties for the Customer's prepayment under the 3-year contract. For example, if the Customer exercises its termination rights after 24 months, it would be entitled to a refund of one-third of the prepaid amount, less \$50,000.

3.2.2 In addition to any other remedies for breach as set-forth in this Agreement, if terminated for cause, LSI shall immediately refund to the Customer all amounts remaining on the prepaid multi-year contract, as calculated against the number of service months remaining at the time of termination and without off-set and regardless of the discount.

3.3 **Excess Use.** Customer's use of the Cloud Service is subject to the Agreement, including the Usage Metric limitations set-forth in Paragraph 1.1 ("Cloud Service Order") and Appendix 1 Landscape Sizing to the SECTION 2 Order Form, except as otherwise provided for in Section 6, Article 2 "Use by Authorized Users" herein. Any use of the Cloud Service that exceeds this scope will be subject to additional fees. Fees accrue from the date the excess use began. Customer will pay for any additional Instance size volume based on applicable pricing in the Order Form by executing with Contractor an amendment to this Agreement.

3.4 **Fee Increases.** At the beginning of each renewal term, Contractor may increase fees to reflect annual increases in consumer prices or costs. Contractor shall give Customer written notice of any such renewal term fee increase at least sixty (60) days prior to the expiration of the then-current term. Any renewal term fee increase shall exceed no more than 3.3% of the rate of the annual fee for the year immediately prior to such renewal term. Not raising fees is not a waiver of Contractor's right to do so for any subsequent renewal term. In addition, Contractor may increase fees by no more than 3.3% if Customer elects to reduce the Cloud Service, or volume for any renewal term.

3.5 **Invoice Format.** Invoices furnished by Contractor under this Agreement should generally include the amount due, a unique invoice number and a reference to the applicable Order Form. Contractor may provide invoices via email to the Customer Project Manager. Customer purchase orders are for administrative convenience and are not a condition of payment.

3.6 **Taxes.** As of the Effective Date, it is the understanding of the Parties that, pursuant to California Sales and Use Tax Regulations, Article 1, Regulation 1502, software services delivered via the Internet are not taxable. If nevertheless, taxes are assessed against Contractor in relation to this Agreement, the Cloud Services, or any other services provided hereunder, Customer will be responsible for all taxes, other than Contractor's income and payroll taxes. Customer will provide to Contractor a copy of the Internal Revenue Service letter confirming the Customer's tax-exempt status as a governmental entity, pursuant to Internal Revenue Code section 115. As applicable and upon request, Customer will provide to Contractor any direct pay permits or valid tax-exempt certificates. If Contractor is required to pay taxes (other than its income and payroll taxes) on this Agreement, the Cloud Services, or any other services provided hereunder, Customer will reimburse Contractor for those amounts and indemnify Contractor for any taxes and related costs paid or payable by LSI attributable to those taxes. In that event, Contractor shall use reasonable efforts to provide adequate documentation of such taxes being levied against it in relation to this Agreement.

Article 4 AUDIT AND INSPECTION OF RECORDS; FALSE CLAIMS.



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4.1 Inspection of Records. Subject to the Agreement, including the requirements of this paragraph, Contractor agrees to maintain and make available to the Customer, during Contractor's regular business hours, accurate books and accounting records directly relating to Contractor's performance of this Agreement no more than once per calendar year during the term of the Agreement. Subject to Customer's compliance with the confidentiality and non-disclosure obligations of the Agreement, with no less than sixty (60) days prior written notice, Contractor will permit Customer to inspect such books and records. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years after final payment under this Agreement or until after final inspection has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights and obligations as conferred upon Customer by this Section 4.1, subject to Contractor's rights under the Agreement and under the law, and provided that the Customer will remain fully liable for the acts, omissions, negligence or breach on the part of such entities or agencies under the Agreement.

4.2 Submitting False Claims. Pursuant to Government Code §12650 et. seq., any person, including a Contractor or a Subcontractor, who submits a false claim shall be liable to the Customer for three times the amount of damages which the Customer sustains because of the false claim. A person who commits a false claim act shall also be liable to the Customer for the costs of a civil action brought to recover any of those penalties or damages and may be liable to the Customer for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the Customer if the person:

4.2.1 knowingly presents or causes to be presented to an officer or employee of the Customer, a false claim for payment or approval;

4.2.2 knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Customer;

4.2.3 conspires to defraud the Customer by getting a false claim allowed or paid by the Customer;

4.2.4 has possession, custody, or control of public property or money used or to be used by the Customer and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

4.2.5 is authorized to make or deliver a document certifying receipt of property used or to be used by the Customer and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

4.2.6 knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

4.2.7 knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Customer; or

4.2.8 is a beneficiary of an inadvertent submission of a false claim to the Customer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Customer within a reasonable time after discovery of the false claim.

Article 5 USAGE RIGHTS; INTELLECTUAL PROPERTY RIGHTS; CLICK-WRAP DISCLAIMER.

5.1 Usage Rights and Restrictions.

5.1.1 Use by Authorized Users. Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and Landscape Sizing set forth in the Order Form and its Appendix 1. For purposes of calculating Usage Metrics and Landscape Sizing, job applicants who are not Customer employees shall not be considered nor counted as Authorized Users. Access credentials for the Cloud Service may not be used by more than one individual but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service, with the exception of job applicants who are not Customer employees. Customer is responsible for breaches of the Agreement caused by Authorized Users, except job applicants who are not Customer employees.



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- 5.1.2 **Acceptable Use Policy.** With respect to the Cloud Service, Customer will not:
- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
 - (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
 - (c) circumvent or endanger its operation or security.

5.1.3 **Verification of Use.** Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and Landscape Sizing. Contractor may monitor use to verify compliance with Usage Metrics, Landscape Sizing and the Agreement.

5.1.4 **Suspension of Cloud Service.** Contractor may suspend access to or use of the Cloud Services if continued use may result in material harm to the Cloud Service or its users or materially impact the security of the Cloud Service or if Customer has violated any provision of Article 5 of the Agreement. Contractor will promptly notify Customer of such suspension. Contractor will limit the suspension in time and scope as reasonably possible under the circumstances. Except pursuant to a court order following litigation related to Customer's uncured material breach of the Agreement, in no event will Contractor suspend Customer's access to or use of the Cloud Services or Customer Data due to any Customer non-payment of fees due under this Agreement. In addition to and not in lieu of Contractor's rights under this Section, and notwithstanding anything to the contrary, Contractor may terminate the Order Form or the Agreement for any uncured payment default pursuant to Section 10.2.1(i) herein.

5.1.5 **Third Party Web Services.** The Cloud Service may include integrations with web services made available by third parties (other than integrations made available by SAP or its Affiliates and delivered to LSI) that are accessed through the Cloud Services and subject to terms and conditions with those third parties. Such third-party web services are not part of the Cloud Service and the Agreement does not apply to them.

5.1.6 **Mobile Access to Cloud Service.** Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download or access to the mobile application and not by the terms of the Agreement.

5.2 Intellectual Property Rights.

5.2.1 **Contractor Ownership.** Contractor, LSI (as defined herein), their Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All intellectual property rights not expressly granted to Customer under this Agreement are reserved to LSI, SAP SE and its licensors.

5.2.2 **Contractor Grant of Rights.** All software hosted at the site for use by the Customer will be licensed by the Customer from SAP SE or from third-parties, as needed by the Customer. The Customer will obtain and make available to LSI sufficient licenses in the hosted software required by LSI and its subcontractors to provide Cloud Services in regard to such software. Additional software may be licensed by LSI for providing the Cloud Services. The cost of any such software licensed by LSI is included in the cost of the Cloud Services.

5.2.3 **Customer Ownership.** Customer owns all rights, including all intellectual property rights, in and related to the Customer Data and any derivative works thereof. All rights including all intellectual property rights not expressly granted to Contractor under this Agreement are reserved to Customer.

5.2.1 **Customer Grant of Rights.** Customer hereby grants Contractor, including LSI SE, its Affiliates, and all of its and their respective employees, Subcontractors, and agents carrying out Contractor's duties to the Customer pursuant to this Agreement a worldwide, non-exclusive right and license to (i) process and otherwise use Customer Data during the term of this Agreement solely to provide and support the Cloud Services, including but not limited to for the performance of obligations to the Customer hereunder, (ii) use the Customer's names, logos, and trademarks on interfaces for the



Cloud Services made available to Customer, as set forth herein, will be provided and supported by the Cloud

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Services and exercise other rights as provided under the Agreement, and (iii) for any other use expressly contemplated by the Agreement (e.g., such as those uses in Section 7.5 below).

522 Non-Assertion of Rights. Customer hereby grants Contractor and its employees and agents carrying out Contractor's duties to the Customer pursuant to this Agreement a limited non-exclusive license to process and otherwise use Customer Data (including Personal Data) during the term of this Agreement solely for the performance of Contractor's obligations to the Customer hereunder. Unauthorized use of Customer Data is prohibited. For purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of Customer Data for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose other than the performance of this Agreement including security or service delivery analysis that is explicitly authorized hereunder.

523 Click-Wrap Disclaimer. Except as otherwise provided in the Order Form or Supplements, and except for third party sites that may be accessible through any of the Cloud Services, the parties acknowledge that Customer and its Authorized Users may be required to click "Accept" as a condition of access to the Cloud Service, but the provisions of any such "click to accept" agreement or other terms (including without limitation any terms of use and privacy policy) referenced therein shall be null and void for Customer and its Authorized Users. The foregoing does not apply to the Customer's own click-wrap agreements in the event the Customer requests Contractor to perform Consulting Services, and Contractor agrees to do so, to include terms of use, privacy policy, or other terms drafted and approved by the Customer on a landing page that does not reside within the Cloud Services but that would be visible and applicable to Customer's Authorized Users, in which case, however, such terms would not be applicable to the Agreement or to LSI nor would LSI or its Affiliates or Subcontractors be bound by such terms, regardless of any click-based "acceptance" or similar acceptance of such terms, all of which will be null and void and of no force and effect upon LSI, its Affiliates and Subcontractors.

Article 6 PROJECT MANAGERS.

6.1 Contractor and Customer shall each designate a Project Manager to be indicated in the Order Form, who shall be accessible by telephone throughout the duration of the Subscription Term under that Order Form and shall be generally available during regular business hours. The Customer and Contractor shall endeavor to maintain the same Project Manager throughout the duration of the applicable Subscription Term. However, if a party needs to replace its Project Manager, the party shall provide the other Party with reasonable written notice thereof on or prior to the date on which the Project Manager shall be replaced. Notwithstanding the foregoing, the parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Parties shall endeavor to notify each other in advance of any such temporary appointments.

Article 7 SERVICES CONTRACTOR AGREES TO PROVIDE.

7.1 Services Contractor Agrees to Provide. During the Term of this Agreement, Contractor will provide the Services set forth in herein including without limitation in SECTION 3 ("Service Level Agreement and Support Services"), SECTION 4 ("Cloud Application, Data Centers and Maintenance"), SECTION 5 and the following:

7.1.1 Provide all hardware, software and other equipment at Contractor's hosting site(s) as described in SECTION 4 ("Cloud Application, Data Centers and Maintenance") (and any applicable disaster recovery site) as necessary to host online and deliver the Cloud Application and Cloud Services described in this Agreement and in substantial material conformity with the Specifications.

7.1.2 Provide Authorized Users access to the Cloud Application, Cloud Services and other services as provided for in this Agreement, including without limitation in as described in SECTION 4 ("Cloud Application, Data Centers and Maintenance") herein, and in substantial material conformity with the Specifications.

7.1.3 Provide disaster recovery services as described in Section 15.4 ("Disaster Recovery") and Section 15.5 ("Disaster Recovery Plan") herein.



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7.2 Documentation. Contractor will deliver completed Documentation in electronic format for the Cloud Application and Cloud Services at the time it gives Customer access to the Cloud Application and Cloud Services, and promptly upon release of any updated versions. The Documentation will accurately and completely describe the functions and features of the Cloud Application and Cloud Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Cloud Application and Cloud Services. Customer shall have the right to make any number of additional copies of the Documentation at no additional charge for use in accordance with this Agreement.

7.3 Modification of Cloud Services and LSI Policies. The Cloud Services policies may be modified by Contractor, so long as Contractor maintains a comparable or better level of Services in material conformity with the Specifications. Contractor will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email to the Customer's Project Manager if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Supplement. If Customer establishes that such a modification is not solely an enhancement and does not maintain a comparable or better level of Services in material conformity with the Specifications, Customer may terminate its subscriptions to the affected Cloud Services by providing written notice to Contractor within thirty (30) days after receipt of Contractor's informational notice, and Customer shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination, and a release from the obligation to pay fees due for periods after the effective date of termination.

Article 8 INSURANCE; INDEMNITY AND WARRANTIES.

8.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section herein, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

8.1.1 Comprehensive/Commercial General Liability Insurance with limits not less than \$2,000,000 (two million dollars) each occurrence and \$3,000,000 (three million dollars) in the aggregate for Bodily Injury, Personal and Advertising Injury, and Property Damage, including Products-Completed Operations and Sexual Abuse and Molestation coverage. The Sexual Abuse and Molestation coverage may be waived if the Contractor will have no contact with, or limited contact with, the Customer's students in the performance of this Agreement, as determined by the Customer.

8.1.2 Automobile Liability Insurance with limits not less than \$1,000,000 (one million dollars) each accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. A waiver of the Automobile liability insurance requirements may be requested by Contractor through the Customer's Contracts Office provided that Contractor will not use any automobiles in the performance of this Agreement. The parties understand and agree that the Customer shall rely upon the representations that the Contractor shall make in any such waiver. Acceptance of such forms by the Customer shall not decrease the liability of Contractor hereunder.

8.1.3 Workers' Compensation Insurance, with Employer's Liability limits not less than \$1,000,000 (one million dollars) each accident or disease. A waiver of the workers' compensation insurance requirements may be requested by Contractor through the Customer's Contracts Office provided that Contractor is a sole proprietor with no employees. The parties understand and agree that the Customer shall rely upon the representations that the Contractor shall make in any such waiver. Acceptance of such forms by the Customer shall not decrease the liability of Contractor hereunder.

8.1.4 Technology errors and omissions (E&O) liability insurance coverage with limits of not less than five million dollars (\$5,000,000) per occurrence/claim. The policy shall, at a minimum, cover failure to render professional services, negligence, professional misconduct and lack of the requisite skill required for the performance of services under this Agreement, and shall also provide coverage for the following risks:

8.1.5 Liability arising from theft, dissemination, and/or use of Confidential Information, including but not limited to, bank and credit card account information or Personal Data, such as, without limitation, name, address, social security number, protected health information,



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financial information, security codes, access codes, passwords, or personal identification numbers (PINs) stored or transmitted in electronic form, and shall include coverage for privacy notification costs, credit monitoring and regulatory fines & fees arising from such theft, dissemination and/or use of Confidential Information.

8.1.6 Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.

8.1.7 Liability arising the introduction of a computer virus into, or otherwise causing damage to the Customer's or a third party's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

8.1.8 Liability arising from the failure of the technology services/product(s) provided pursuant to this Agreement.

8.1.9 Cyber-liability insurance coverage with limits of not less than five million dollars (\$5,000,000) per occurrence/claim, covering liability arising from occurrences/claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, network security, and failure to render professional services. Such insurance shall provide coverage for liability assumed under a contract.

8.2 All policies shall be written on an occurrence basis, except as otherwise provided for in this subsection. Coverage may be provided on a claims-made form, provided that the following requirements are met:

8.3 The retroactive coverage date shall be shown and shall commence before the beginning of any Contractor operations and/or performance under this Agreement.

8.4 Contractor shall maintain the required coverage throughout the term of this Agreement and, without lapse, and provide Certificates of Insurance to the Customer upon request for a period of three (3) years beyond the expiration or termination of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration or termination of the Agreement, such claims shall be covered.

8.5 If coverage is cancelled or non-renewed, and not replaced with another claims-made form with a retroactive date prior to the beginning of any Contractor operations and/or performance under this Agreement, Contractor shall purchase an extended reporting period for a minimum of three (3) years after the expiration or termination of the Agreement.

8.6 If requested by the Customer, a copy of the policy's claims reporting requirement, or any other policy documents, shall be provided to the Customer.

8.7 Comprehensive/Commercial General Liability policy must provide the following:

8.7.1 Name as Additional Insured the <<INSERT CUSTOMER NAME>> Customer, its Board, officers and employees.

8.7.2 That such policies are primary and non-contributory to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of insurance.

8.7.3 The contractor shall provide thirty (30) days advance written notice to the Customer of cancellation, non-renewal or reduction in coverage to the following office:

Contracts Office

CUSTOMER NAME

ADDRESS

8.8 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.



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8.9 The insurance requirements under this Agreement shall be the greater of (1) the minimum limits and coverage specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements stated hereinabove are sufficient to cover the obligations of the Contractor under this Agreement.

8.10 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by Customer and admitted doing business in <STATE> or accepted by the Surplus Lines Association to do business in <STATE>. A non-admitted company should have an A.M. Best rating of A- X or higher. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

8.11 **Waiver of Subrogation.** Contractor agrees to waive subrogation with respect to Workers' Compensation insurance maintained under this Agreement. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into a waiver of subrogation on a pre-loss basis. Contractor shall promptly notify Customer of any such express prohibition or condition in any applicable policy which may void coverage.

8.12 Should any required insurance lapse during the term of this Agreement, Contractor shall promptly provide satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If such evidence is not provided as required, the Customer may, at its sole option, terminate this Agreement for cause, as provided for herein.

8.13 Before commencing any operations under this Agreement, Contractor must provide the Customer with the certificates of insurance, additional insured endorsement, and waiver of subrogation with insurers satisfactory to the Customer, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon the Customer's request.

8.14 Approval of the insurance by the Customer shall not relieve Contractor of any of the insurance requirements set forth herein, nor decrease the liabilities and obligations of Contractor hereunder.

8.15 **General Indemnification.** Contractor shall indemnify and hold harmless the Customer, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all third-party claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including reasonable legal fees and costs of investigation) (collectively "Claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement by Contractor and/or Contractor's agents or employees, including but not limited to any Claim for personal injury, death, property damage, loss of profits and/or disclosure of Confidential Information which might be obtained by Contractor or Contractor's agents or employees in the performance of this Agreement.

8.16 Intentionally Left Blank.

8.17 **Infringement Indemnification.** Contractor shall indemnify, defend and hold harmless the Customer, its Board, officers, employees and agents, for any Claim by any third party of an alleged infringement of copyright, patent right, trade secret, trade name, trademark, service mark, or any other right in intellectual property ("Infringement") arising out of the use of the Software Application by the Customer in accordance with the terms of this Agreement. This indemnity shall survive the termination or expiration of this Agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Contractor shall have the right to investigate, defend and settle any such Claim against the Customer as detailed herein. Contractor shall have no liability for any Claim of Infringement to the extent it is based on Customer's unauthorized modification or attempted modification of the Cloud Application and Cloud Services or any failure or delay by Customer to implement any improvements or updates to the Cloud Application and Cloud Services as supplied by Contractor, unless Customer has obtained prior written authorization from Contractor permitting such modification, attempted modification, failure or delay. Contractor shall have



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no liability for any claim of Infringement to the extent it is based on Customer's use or combination of the Cloud Application and Cloud Services with products or services not provided by Contractor hereunder, or products or data of the type for which the Cloud Application and Cloud Services was neither designed nor intended to be used.

8.18 Indemnity Conditions. Contractor's defense and indemnification obligations under this Section ("Indemnification") are conditioned upon the following: (i) Customer providing Contractor with prompt written notice of any Claim for which indemnification is sought, provided however that no delay on the part of the Customer shall relieve Contractor from any obligation hereunder; (ii) Contractor having sole control of the investigation, defense and settlement of such claim, provided, however, that Contractor will not consent to the entry of any judgment or enter into any settlement with respect to a Claim without the prior written consent of Customer (which consent will not be unreasonably withheld) except where the judgment or proposed settlement involves only the payment of money damages by Contractor, does not impose any obligation upon Customer, and Contractor obtains the full and complete release of Customer; Customer shall have the right to have any suit or proceeding monitored by counsel of Customer's choice and at its expense; and (iii) Customer's reasonable cooperation with Contractor in the defense and settlement of the claim, at Contractor's expense.

8.19 Infringement Finding. In the event a final injunction is obtained against Customer's use of the Cloud Application and Cloud Services by reason of Infringement, or, in Contractor's opinion, Customer's use of the Cloud Application and Cloud Services pursuant to the Agreement is likely to become the subject of a Claim of Infringement, Contractor may at its option and expense: (a) procure for Customer the right to continue to use the Cloud Application and Cloud Services as contemplated hereunder, (b) replace the Cloud Application and Cloud Services with a non-infringing, materially functionally equivalent substitute Cloud Application and Cloud Services, or (c) suitably modify the Cloud Application and Cloud Services to make its use hereunder non-infringing while retaining material functional equivalency to the unmodified version of the Cloud Application and Cloud Services. If none of these options is reasonably available to Contractor, then the effected Cloud Application in Section 2.1 ("Cloud Service Order") of the Order Form, or effected part of such Cloud Application in said Section 2.1, may be terminated at the option of either Party hereto, and Customer shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination, and a release from the obligation to pay fees due for periods after the effective date of termination.

8.20 Warranties; Disclaimer.

8.20.1 Compliance with Law. Each Party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with: in the case of Contractor, the operation of Contractor's business as it relates to the Cloud Services, and in the case of Customer, the Customer Data and Customer's use of the Cloud Services.

8.20.2 Good Industry Practices. Contractor warrants that it will provide the Cloud Services: in material conformance with the Specifications, as defined herein; and with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Services.

8.20.3 Remedy for Breach of Warranty. Notwithstanding any provisions herein to the contrary, Customer's sole and exclusive remedies and Contractor's entire liability for breach of warranty under Section 8.19.2 ("Good Industry Practices") will be: the re-performance of the deficient Cloud Services so that they meet the standards specified, and if Contractor fails to re-perform, Customer may terminate its subscription for the affected Cloud Services. Any termination under this Section must occur within three (3) months of Contractor's failure to re-perform to standards, and Customer shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination, and a release from the obligation to pay fees due for periods after the effective date of termination.

8.20.4 System Availability. Contractor warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in Schedule C ("Service Level Agreement for LSI Cloud Services ('SLA')") of the Order Form and/or the Order Form, as applicable. Customer's sole and exclusive remedy for Contractor's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow Contractor's posted credit claim procedure. When the validity of the service credit is confirmed by Contractor in writing (email



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permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due. Notwithstanding the foregoing, in the event Contractor fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing Contractor with written notice within thirty (30) days after the failure, and Customer shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination, and a release from the obligation to pay fees due for periods after the effective date of termination.

8.20.5 Warranty Exclusions. The warranties in Section 8.19.3 ("Good Industry Practices") and Section 8.19.4 ("System Availability") will not apply to the extent that: the Cloud Services are not used in material accordance with this Agreement, or any non-conformity is caused by any product or service not provided by Contractor.

8.21 Disclaimer. Except as expressly provided in the Agreement, neither Contractor nor its Subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of Contractor or product roadmaps in obtaining subscriptions for any Cloud Service.

Article 9 LIMITATION OF LIABILITY.

9.1 Limitation of Liability of Customer. Notwithstanding anything to the contrary contained herein or elsewhere, **excepting** the Customer's payment obligations under the Agreement, an unauthorized use or disclosure of LSI's confidential information, a breach by the Customer of its data protection and security obligations or the gross negligence or willful misconduct of Customer or any of its employees', agents' or contractors', the Customer's maximum aggregate liability for damages arising out of all events (or a series of connected events), whether such claim(s) is/are based on contract, tort, statutory, or any other theory of liability, in any twelve (12) month period will not exceed the annual subscription fees paid for the applicable Cloud Service for that twelve (12) month period (i.e., any "twelve (12) month period" commences on the Subscription Term start date or any of its yearly anniversaries), **and in no event shall Customer be liable, regardless of whether any claim is based on contract, tort, statutory, or any other theory of liability for any special, consequential, indirect, incidental, punitive, economic or exemplary damages, including, but not limited to, lost profits, loss of goodwill, loss of data, or work stoppage arising out of or in connection with the Agreement, the Cloud Services, or any other Services provided in connection with the Agreement, even if Customer has been advised of the possibility of any such potential claim(s), loss(es) or damage(s).**

9.2 Limitation of Liability of Contractor. Notwithstanding anything to the contrary contained herein or elsewhere, (i) excepting LSI's obligations under section 8.2.1 and unauthorized use or disclosure of Customer's confidential information, a breach of LSI's data protection and security obligations under this Agreement that result in an unauthorized use or disclosure of Personal Data, or death or bodily injury arising from LSI's or any of its Affiliates', employees', agents' or Subcontractors' gross negligence or willful misconduct, LSI's maximum aggregate liability to Customer (including any persons or entities claiming through Customer or its affiliates, employees, agents or contractors) and for damages arising out of all events (or a series of connected events), whether such claim(s) is/are based on contract, tort, statutory, or any other theory of liability, in any twelve (12) month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve (12) month period (i.e., any "twelve (12) month period" commences on the Subscription Term start date or any of its yearly anniversaries), and (ii) in no event will LSI (or its respective Affiliates' and Subcontractors') be liable, regardless of whether any claim is based on contract, tort, statutory, or any other theory of liability, for any special, consequential, indirect, incidental, punitive, economic, or exemplary damages, including but not limited to lost profits, loss of goodwill, loss of data, or work stoppage, arising out of or in connection with the Agreement, the Cloud



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Services, or any other Services provided in connection with the Agreement, even if LSI has been advised of the possibility of any such potential claim(s), loss(es) or damage(s), and (iii) LSI will not be liable for any claims, losses or damages of any kind or nature, regardless of whether any claim is based on contract, tort, statutory, or any other theory of liability, caused by, arising out of, or related to, any Cloud Service provided for no fee.

93 **Risk Allocation.** The Agreement allocates the risks between LSI and Customer. The fees for the Cloud Services reflect this allocation of risk and limitations of liability.

Article 10 DEFAULT; REMEDIES; TERMINATION; DISPOSITION OF CONTENT; SURVIVAL.

10.1 **Default.** Each of the following shall constitute an event of default ("Event of Default") under the Agreement:

- (i) a party breaches its confidentiality obligations under Section 14.2, herein,
- (ii) a party makes an assignment in violation of the Agreement, or
- (iii) a party files, or consents by answer or otherwise to the filing against it of a petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or makes an assignment for the benefit of its creditors.

10.2 Termination.

10.2.1 **Termination for Cause.** Customer shall have the right to terminate this Agreement in an Event of Default by Contractor, provided that Contractor fails to remedy such Event of Default within thirty (30) days after written notice thereof from Customer to Contractor (30-day cure period), in which event, Customer shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination, and a release from the obligation to pay fees due for periods after the effective date of termination. At Customer's sole election, the 30-day cure period will **not** apply to termination in an Event of Default by Contractor under Section 10.1.2 herein, or for any material breach by Contractor of Section 12.3 ("Assignment") or Article 14 ("Data and Security") herein (in which case, Customer shall provide the sooner effective date of termination in its notice to Contractor including without limitation immediate termination), and Customer shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination, and a release from the obligation to pay fees due for periods after the effective date of termination.

10.2.2 **Termination for Convenience.** Customer shall have the right to terminate this Agreement for convenience and without cause, upon thirty (30) days prior written notice, in which event, Customer shall not thereby be entitled to a refund of the amount of the prepaid fees for the terminated subscription(s), and Customer shall be released from the obligation to pay fees due for periods after the effective date of termination.

10.2.3 Contractor Right of Termination.

(i) Contractor shall have the right to terminate this Agreement in the event that the Customer materially fails to perform its obligations under Article 3 ("Availability of Funds; Compensation; Taxes") herein, and such failure continues for a period of thirty (30) days after written notice thereof from Contractor to Customer.

(ii) **Termination for Non-Appropriation of Funds.** Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by Customer are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then Contractor will have the right to terminate this Agreement at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding. Contractor will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available.

10.2.4 **Disposition of Content and Transition Services.** Upon expiration or termination of the Cloud Services under this Agreement:



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10.2.5 Disposition of Content. Contractor may immediately discontinue the Customer's access to the Cloud Application, Cloud Services and any Confidential Information of Contractor. Contractor shall within thirty (30) days of the expiration or termination of the Cloud Services return Customer Data in an agreed-upon machine readable format. This provision applies as well to all Customer Data in the possession of Subcontractors, agents or auditors of Contractor, and Contractor shall ensure that all such parties comply. Such data transfer shall be done at no cost to the Customer. Once Contractor has received written confirmation from Customer that Customer Data has been successfully transferred to Customer, and except to the extent retention is required by applicable law, Contractor shall within thirty (30) days securely destroy, as below, all Customer Data from its hosted servers or files and provide Customer with written certification within ten (10) days that such secure destruction has occurred. Any retained data are subject to the confidentiality and security provisions of this Agreement. Secure destruction shall be accomplished by "purging" and/or "physical destruction" as applicable, in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or an equivalent or higher current industry standard and in no case less than a reasonable standard of care.

10.2.6 Disposition of Content in Event of Bankruptcy. Upon termination of this Agreement by Customer due to a Contractor Event of Default under Section 10.1.2, Contractor shall within forty-eight (48) hours return Customer Data in an agreed-upon machine readable format. This provision applies as well to all Customer Data in the possession of Subcontractors, agents or auditors of Contractor, and Contractor shall ensure that all such parties comply. Such data transfer shall be done at no cost to the Customer. Once Contractor has received written confirmation from Customer that Customer Data has been successfully transferred to Customer, and except to the extent retention is required by applicable law, Contractor shall within thirty (30) calendar days securely destroy, as below, all Customer Data from its hosted servers or files and provide Customer with written certification within ten (10) business days that such secure destruction has occurred. Any retained data are subject to the confidentiality and security provisions of this Agreement. Secure destruction shall be accomplished by "purging" or "physical destruction" in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or an equivalent or higher most current industry standard and in no case less than a reasonable standard of care.

10.2.7 Transition Services. Contractor shall provide to Customer and/or Successor Service Provider assistance requested by Customer to affect the orderly transition of the Cloud Services, in whole or in part, to Customer or to Successor Service Provider ("Transition Services") as detailed herein. Such Transition Services shall be provided on a time-and-materials basis, per Section 13.9 ("Modification of this Agreement") herein, if the Customer opts to return to its own servers or Customer chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated Cloud Services from Contractor to Successor Service Provider; (b) if required, transferring the Customer Data to Successor Service Provider; (c) using commercially reasonable efforts to assist Customer in acquiring any necessary rights to legally and physically access and use any third-party technologies and Documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to Customer, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the Cloud Services; and, (e) such other activities upon which the Parties may agree. During the transition period, Cloud Application and Customer Data access shall continue to be made available to Customer without alteration, on a month-to-month basis, with the monthly Cloud Application fee being the immediately previous annual fee divided by 12. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section 10.4.3 ("Transition Services") shall survive the termination or expiration of this Agreement.

10.3 Survival. Any right or obligation of the parties under this Agreement which, by its express terms or nature is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

Article 11 CONFLICT OF INTEREST.

11.1 Conflict of Interest Standards. The following is a brief overview of conflict of interest laws and policies. Contractor is responsible to know, and, to the extent applicable to Contractor and Contractor's business operations, comply with, the appropriate requirements of the law, including notification requirements, to the extent applicable to Contractor and Contractor's business operations,



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as provided for in the California Political Reform Act (CPRA), codified in part as Government Code section 1090 and 87100.

11.1.1 Under the California Political Reform Act (CPRA), codified in part as Government Code section 1090 and sequential, and section 87100 and sequential: No public official shall make, participate in making, or in any way attempt to use his or her official position, to influence a contract on behalf of the public agency when he or she knows, or has reason to know, that he or she has a personal financial interest in that contract.

11.1.2 Government Code section 1090 defines "making" a contract broadly to include actions that are preliminary or preparatory to the selection of a contractor such as but not limited to: involvement in the reasoning, planning, and/or drafting of scopes of work, making recommendations, soliciting bids and requests for proposals, and/or participating in preliminary discussions or negotiations. (Cal. Govt. Code § 1090)

11.1.1 State law limits the amount of s that may be received by public officials from a single source during a calendar year. The gift limit is \$470 per source per calendar year (effective January 1, 2017 through December 31, 2018) (See e.g. Cal. Govt. Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov.)

11.1.2 State law prohibits, with limited exceptions, certain former local public officials from appearing before their former public agency for the purpose of influencing a governmental decision for 12 months from the date the former employee left that public agency. (Cal. Govt. Code §87406.3)

11.1.3 State law bars a public agency employee from making governmental decisions regarding an organization which is engaged in employment negotiations with that public agency employee. (Cal. Govt. Code § 87407)

11.1.4 Contractors and their representatives may be required to disclose economic interests that they hold that could foreseeably be affected by the exercise of their public duties. If applicable, Contractors/representatives must submit a disclosure filing called a Statement of Economic Interests or "Form 700." (Cal. Govt. Code §§ 81000-91015; CUSTOMER Board Rules and Procedures 9270, "Conflict of Interest Code")

11.2 Obligations of Contractor. It is the obligation of the Contractor, as well as any Subcontractors, to determine whether or not participation in a contract may constitute a conflict of interest. While the Customer staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, Subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the Customer. The determination of the potential for a conflict must be made by the Contractor. Contractor is responsible to notify the Customer immediately if it finds that a potential conflict may exist.

11.3 Consultation with Counsel. The Customer strongly advises any Contractor, and any proposing/ bidding firm, to consult with its legal counsel to determine whether a conflict of interest may exist. It is the responsibility of a Contractor, or a proposing/bidding firm, to make that determination.

11.4 Consequences of a Violation. Any contract made in violation of Section 1090 is void and cannot be enforced. When Section 1090 is violated, a government agency is not obligated to pay the Contractor for any goods or services received under the void contract. The government agency can seek repayment from the Contractor of any amounts already paid and refer the matter to appropriate authorities for prosecution. Additional consequences may also apply.

11.5 Disclosure Requirement. Contractor will submit to the Customer a list of all of Contractor's employees (including owners) who are also current CUSTOMER Board members or employees, or former CUSTOMER Board members or employees in the last one year. Contractor will submit the attached "Contractor's Disclosure Form Regarding CUSTOMER Officials." Contractor will update this form with CUSTOMER, as needed, during the term of this Agreement. Exception: Public agencies that provide contract services to the Customer are not subject to this disclosure requirement.

11.6 Compliance with Gift Limits. Contractor will abide by legal gift limits and use good judgment, discretion and moderation when offering gifts, meals or entertainment or other business courtesies to Customer officials, and in order not to place Customer officials in conflict with any specific



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gift restrictions: (1) No Contractor or representative thereof shall offer, give, or promise to offer or give, directly or indirectly, any money, gift or gratuity to any Customer contracting or procurement official at any time. (2) No Contractor or representative thereof shall offer or give, directly or indirectly, any gifts in a calendar year to a Customer official, which exceed the allowable gift limit. (See e.g. Cal. Govt Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov)

11.7 File Statement of Economic Interests ("Form 700") as Applicable. Contractors and their representatives may be required to disclose any economic interests they hold that could foreseeably be affected by the exercise of their public duties. (Govt. Code §§ 81000-91015; CUSTOMER Board Rules and Procedures 9270 "Conflict of Interest Code") This filing, called a Statement of Economic Interests or "Form 700," aides public officials to ensure they do not make or participate in making any governmental decision in which they have a financial interest.

11.7.1 Applicability. Contractors/representatives may be considered public officials and, if so, must file a Form 700 only if they qualify as "Consultants." Under CUSTOMER's Conflict of Interest Code, "Consultant" means any natural person who provides, under contract, information advice, recommendation or counsel to an agency, department, officer, or commission, provided, however, that a "Consultant" shall not include a person whom:

(a) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(b) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

11.7.2 Filing Deadlines. Contractors/representatives required to file a Form 700 shall submit a filing: (a) ten days prior to commencement of work with CUSTOMER; (b) yearly thereafter by the April 1st annual due date; and (c) upon termination of work with CUSTOMER.

11.7.3 Interests to Be Disclosed. Contractors/representatives required to file a Form 700 shall disclose only income, investments and business positions in: (a) business entities that manufacture or sell supplies, books, machinery or equipment of the type utilized or purchased by CUSTOMER and for which the Contractor/representative is a manager or director; and/or in (b) business entities that are contractors or Subcontractors engaged in the performance of work services of the type utilized or purchased by CUSTOMER and for which the Contractor/representative is a manager or director.

11.7.4 Filing Process. Form 700 must be received by CUSTOMER's Contracts Office by the timelines provided herein, in order to be considered properly filed.

11.7.5 Disqualification. Consultants/Representatives who must file financial disclosure statements, like other public officials under the CPRA, are subject to disqualification when they encounter decision-making that could affect their financial interests. Contractors and their representatives shall be responsible for ensuring that they take the appropriate actions necessary in order not to violate applicable laws and CUSTOMER policies.

Article 12 ADDITIONAL REQUIREMENTS.

12.1 Qualified Personnel. Contractor shall use reasonable efforts to utilize only competent personnel under the supervision of, and in the employment of, or via contract with, Contractor (or Contractor's Subcontractors) to perform Contractor's obligations under this Agreement. Contractor may consider Customer's reasonable requests regarding assignment or removal of personnel but makes no promise to assign or remove any personnel on the basis of Customer's requests.

12.2 Subcontracting. Contractor may subcontract and use the services of Subcontractors, for the performance of portions of the Agreement, including without limitation the provision of Cloud Services, Consulting Services and any other services under the Agreement, provided that Contractor shall remain responsible for breaches of the Agreement caused by its Subcontractors. Upon request, Contractor shall provide to Customer a list of all Subcontractors. Nothing contained in this Section shall create any contractual relationship between any of Contractor's Subcontractors and Customer. Except as otherwise authorized by Customer pursuant to an Order Form or Supplement, no party on the basis



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of the Agreement shall contract on behalf of or in the name of the other party to this Agreement, and violation of this provision shall confer no rights on any party and shall be void. Notwithstanding anything that may be construed to the contrary, Customer agrees that its Business Partners and Successor Service Providers, and any other party with whom Customer may contract directly for implementation of any Cloud Services or any other services, is not a Subcontractor of LSI, is not included within the meaning of "Subcontractors," and LSI will not be liable or responsible in any way for any acts, omissions, default, breach or violations or non-compliance with any law, regulation or governmental order.

12.3 Assignment. Except to the extent permitted under Section 12.2 ("Subcontracting") herein and excepting any assignment of the Agreement and assignments of any Order Forms or Supplements made by Contractor to any of its Affiliates, and except as otherwise provided in any Order Form or Supplement, LSI will use reasonable efforts to notify Customer of any other assignment of the Agreement made by LSI. Without LSI's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. Any purported assignment made in violation of this provision shall be null and void.

12.4 Independent Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the Consulting Services requested by Customer under this Agreement. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement. Each party, its agents, and employees will not represent or hold themselves out to be employees of the other party at any time. Each party or any agent or employee of a party shall not have employee status with the other party, nor be entitled to participate in any plans, arrangements, or distributions by the other party pertaining to or in connection with any retirement, health or other benefits that the other party may offer its own employees. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Customer and Contractor or any agent or employee of Contractor.

12.5 Compliance Generally. Contractor understands that it shall remain in compliance with all applicable federal, state, local and international laws, rules, and regulations that may be in effect during the term of the Agreement as they apply to the operation of Contractor's business with respect to provision of the Cloud Services. Customer understands that it shall remain in compliance with all applicable federal, state, local and international laws, rules, and regulations that may be in effect during the term of the Agreement as they apply to the operation of Customer's business with respect to use of and access to the Cloud Services. For the avoidance of doubt, Contractor does not represent or warrant that any Cloud Service itself complies with any applicable laws, rules or regulations.

12.6 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Governmental Conduct Code, which prohibits any person who contracts with the Customer for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a Customer elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to Customer.

Article 13 GENERAL PROVISIONS.

13.1 Notices to the Parties. All notices to be given by the parties shall be in writing and delivered to the addresses listed in the Order Form, with a copy to each party's legal department as listed below, by depositing the same in the United States Post Office (which shall be deemed delivered



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two days after being provided to the USPS) or via nationally-recognized delivery service such as Federal Express, United Parcel Service or DHL (which shall be deemed delivered on the date of delivery provided by such delivery service). Either party may change the address to which notices are to be sent by giving written notice thereof to the other party.

13.1.1 A copy of all notices sent by the parties shall be addressed as follows to each party's respective legal department:

To Customer: To the address and contact as listed in the applicable OrderForm,

With a copy also sent to the Customer's Legal Department:

XXX
XXX
XXX

To Contractor: To the address and contact as listed in the applicable Order Form.

13.1.2 Notwithstanding the foregoing, notices by Contractor relating to the operation or support of the Cloud Services and those notices under Sections 5.1.4 (Suspension of Cloud Services) and 7.3.1 (Modifications of Cloud Services) may be sent in the form of an electronic notice (email) to Customer's Project Manager or designee identified in the applicable Order Form.

13.2 LSI is committed to delivering software solutions that are accessible to individuals with disabilities. This includes addressing the Electronic and Information Technology Accessibility Standards described in Section 508 of the Rehabilitation Act. While the solutions proposed implement a substantial number of accessibility features, they are currently not fully optimized for accessibility. Supported accessibility features are provided by LSI solutions in combination with third-party assistive technologies such as the screen reader JAWS. JAWS and most other assistive technologies may require LSI and or Customer furnished client-side software.

13.3 **Public Records.** The Parties understand and agree that, as a California public school Customer, the public records of the Customer are subject to the California Public Records Act (the "Act") (California Government Code §6250 et. seq.), including without limitation this Agreement, except to the extent exempt from disclosure under applicable law. Public records are subject to disclosure under the Act (except to the extent exempt from disclosure under applicable law), including without limitation public inspection and copying.

13.4 Dispute Resolution.

13.4.1 Contractor and Customer agree to exercise reasonable efforts and to negotiate in good faith to amicably resolve any dispute that may arise concerning the performance by Contractor or Customer of its obligations under this Agreement. If the project managers for Customer and Contractor cannot resolve a dispute through such negotiations, then such project managers will escalate the dispute to their respective executives who are at a higher level of management than the project managers.

13.4.2 In such event, Contractor or Customer shall give the other party written notice of any dispute not resolved by good faith negotiations between the respective project managers (the "initial notice"). Within fifteen (15) days after delivery of such initial notice, the receiving parties shall submit to the sending party a written response. Both the initial notice, and the response, shall include (i) a statement of the party's position, (ii) a summary of arguments supporting that position, and (iii) the name and title of the executive who will represent that party and of any other person who will accompany the executive.

13.4.3 Within thirty (30) days after delivery of the initial notice, the executives of the parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.



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13.4.4 If the executives cannot resolve the dispute to the satisfaction of Contractor and Customer, then the parties may attempt to mutually agree on the conditions under which such unresolved disputes can be referred to mediation. If such parties do not mutually agree to mediation within thirty (30) days of one party's initial request for mediation or are unable to mutually agree on the selection of a mediator, or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

13.5 Governing Law; Venue; Jurisdiction. The formation, interpretation and performance of this Agreement and any claims relating to its subject matter shall be governed, construed, and enforced in accordance with the laws of the State of California without regard to its conflict of law provisions. Venue and exclusive jurisdiction for all disputes relative to the formation, interpretation and performance of this Agreement and any claims relating to its subject matter shall be in the City and County of San Diego, California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

13.6 Non-Waiver of Rights. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

13.7 Construction. All paragraph captions/section headings are for convenience of reference only and shall not be considered in construing this Agreement.

13.8 Entire Agreement. The Agreement sets forth the entire agreement between the parties as to parties' business relationship related to the subject matter herein. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. This Agreement may only be modified as provided in Section 13.9 ("Modification of this Agreement") herein, subject to the exceptions stated therein. The Agreement will prevail over the terms of any Customer-issued purchase order and the terms and conditions provided on any Customer-issued purchase order shall be of no force or effect, even if Contractor accepts or does not otherwise reject such purchase order. In no event does the Agreement include, nor will be construed as including, any other contemporaneous agreement(s) that Customer may have with LSI or any LSI Affiliate(s) or any third party(ies) involving the implementation of any LSI solutions.

13.9 Modification of this Agreement. Except as expressly provided in Section 7.3 ("Modification of Cloud Services and LSI Policies") herein, this Agreement may only be modified by written instrument executed by the parties. The preceding sentence does not apply to notices of change in personnel and/or of the address to which notices shall be provided under Section 13.1 ("Notices to Parties"), or use of name/marketing approval, if provided, pursuant to Section 13.10 ("Use of Name; Marketing") herein.

13.10 Use of Name; Marketing. During the term of the Agreement, including all Subscription Terms, and in addition to any further permissions that may be contained in any Supplement, Contractor may use Customer's name in Contractor's customer listings and in quarterly calls with its investors. Excluding the foregoing, neither party will use the name, marks or logos of the other party in any planned advertisement, press release, or other planned publicity or marketing materials, in any form or media, without the prior written approval of the other party. In addition to any further permissions that may be contained in any Supplement, Customer also agrees that LSI may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with LSI.

13.11 No Third-Party Rights. Except for Contractor, LSI SE and all of its and their respective Affiliates and Subcontractors all of whom are intended third party beneficiaries of the Agreement, the Agreement is not for the benefit of any third party not a signatory hereto and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

13.12 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then



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(a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

13.13 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of Customer and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

13.14 Execution; Counterparts. Original copies of this Agreement shall be executed by the respective party's authorized signatory(ies). Electronic signatures that comply with applicable law are deemed original signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by the Parties and delivered to the other and as otherwise required under this Agreement.

Article 14 CONFIDENTIALITY, DATA AND SECURITY.

14.1 Customer Data. Customer is responsible for the Customer Data (except for LSI's hosting of the Customer Data within the Cloud Service pursuant to the Agreement) and for entering, transferring or otherwise inputting all Customer Data into the Cloud Services. Customer shall maintain reasonable security standards for its Authorized Users' use of the Cloud Services. Customer will collect and maintain all personal data, which may include FERPA Records, contained in the Customer Data in compliance with applicable data privacy and protection laws. Without limiting the Customer's obligations above with respect to Customer Data, the parties understand that LSI's is responsible for hosting the Customer Data within the Cloud Service, subject to the Agreement.

14.1.1 Access to and Retrieval of Customer Data. During the applicable Subscription Term(s), the Customer has the right to access Customer Data at any time. The Customer shall also have the right to export and retrieve Customer Data in standard format. In the event that export, and retrieval are subject to technical limitations, Contractor and Customer will find a reasonable method to allow Customer to access Customer Data, endeavoring to do so without unreasonable delay. Before a Subscription Term expires, Customer may use LSI's self-service export tools (as available) to perform a final export of Customer Data from the applicable Cloud Service. In the event of third-party legal proceedings relating to the Customer Data, LSI will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

14.2 Confidential Information. "Confidential Information" means any and all non-public data and information including without limitation proprietary or confidential technical and business information, including Personal Data, and financial information, that is furnished or disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") in the performance of this Agreement, that, (i) if in a tangible medium, the Disclosing Party has marked as "confidential," "proprietary," or similar designation at the time of disclosure, or that is reasonably understood to be confidential or proprietary given its nature or the circumstances surrounding its disclosure; or, that, (ii) if disclosed orally or by other intangible means, the Disclosing Party or its representatives designates as confidential or proprietary at the time of disclosure, or that is reasonably understood to be confidential or proprietary given its nature or the circumstances surrounding its disclosure. Confidential Information of the Customer includes without limitation Customer Data and Personal Data. With respect to Contractor and its Affiliates, Confidential Information also means all LSI Property, including the Cloud Service, Documentation, Cloud Materials and analyses under Section 7.5 ("Analyses") of these GTCs; and (ii) information regarding LSI research and development, product offerings, pricing and availability. Confidential Information of either party pertaining to the subject matter of the Agreement that was disclosed prior to execution of the Agreement will be subject to Section 14.2 of these GTCs.

14.2.1 Nondisclosure. The Receiving Party of Confidential Information will maintain the Confidential Information it receives from the other Party in strict confidence using commercially reasonable standards to the same extent it protects its own Confidential Information and in no case less than a reasonable standard of care. In addition, the Receiving Party will not disclose or publish



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such Confidential Information to any third parties other than employees (including Authorized Users), contractors, representatives, agents, or subcontractors (including, in the case of LSI, its Subcontractors), Affiliates, and the respective personnel, agents and Subcontractors of such Affiliates of a Party who have a need to know in connection with the performance of this Agreement, or whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement, and agree not to use Confidential Information for any purposes whatsoever other than the performance of this Agreement or as permitted under this Agreement. Each Party will require its employees and agents to do likewise.

14.2.2 Exceptions. The nondisclosure obligations provided in Section 14.2.1 hereinabove do not apply to information that: (i) is generally available to the public other than by a breach of this Agreement by the Receiving Party; (ii) is generally available to the public without breach of the Agreement by the receiving party; (iii) is independently developed by the Receiving Party or its employees or agents without reference to the information of the Disclosing Party; (iv) is already known by the Receiving Party, free of confidentiality restrictions, prior to the date of disclosure by Disclosing Party; or (v) Disclosing Party permits Receiving Party in a writing signed by an authorized representative of the Disclosing Party to disclose or the Disclosing Party agrees in writing is free of confidentiality restrictions.

14.2.3 Compulsory Disclosure. In addition, the Receiving Party is allowed to disclose Confidential Information of the Disclosing Party solely to the extent that such disclosure is: (i) required by law (including but not limited to California open records and freedom of information statutes) or by the order of a court or similar judicial or administrative governmental body, provided that the Receiving Party first notifies the Disclosing Party of such required disclosure at least thirty (30) days prior to the due date for such disclosure (or as soon as practicable under the circumstances but in any event prior to any such disclosure being made) and in writing (to the extent that such notice is not prohibited by law), provides the Disclosing Party with an opportunity to contest such disclosure and defend the confidential nature of its information, and fully cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and at its expense, in any lawful action to contest or limit the scope of such required disclosure. If such action by the Disclosing Party is unsuccessful, the Disclosing Party does not take such action, or the Disclosing Party otherwise waives its right to seek such remedies, the Receiving Party shall disclose only that portion of the Confidential Information which it is legally required to disclose, redacting all portions that contain financial information, pricing and all other sensitive information. Except as required herein and provided that the Receiving Party complies with the foregoing, no other provision of these GTCs shall require the Receiving Party to refuse to disclose information, where to do so would violate applicable law.

14.2.4 Notification of Legal Requests. Contractor shall notify Customer, without undue delay, upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to Customer Data under this Agreement, or which in any way might reasonably require access to Customer Data. Contractor shall not respond to subpoenas, service of process and other legal requests related to Customer without first notifying Customer other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement.

14.2.5 Injunction Each party acknowledges that breach of its confidentiality obligations under this Agreement may give rise to irreparable and continuing injury to the other party, for which monetary damages would not provide adequate compensation. Accordingly, the parties agree that, in addition to any other remedy, the Disclosing Party shall be entitled to seek injunctive relief against such breach or threatened breach. If, however, such an injunction is obtained by Customer as the Disclosing Party against Contractor as the Receiving Party, then notwithstanding anything in the Agreement to the contrary, Contractor will not be liable for any breach or losses arising from any delay in performance or failure to perform or make the Cloud Services available under any then-current Subscription Terms during the period in which Contractor, its Affiliates or Subcontractors is required to comply with such injunction.

14.2.6 Regulatory Matters. Contractor's Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany. Customer will not submit Contractor's Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export Contractor's Confidential Information to countries, persons or entities if prohibited by export laws.



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

14.3 Security.

14.3.1 Contractor shall exercise commercially reasonable efforts to provide and maintain up-to-date security in its provision of the Cloud Services designed to prevent unauthorized disclosure of, Customer Data contained in the Cloud Services. During the term of the Agreement, in the event of a security breach in the Cloud Service involving Customer Data, after LSI has first conducted its own due diligence and determined that an unauthorized disclosure of Customer Data to a third party resulted from such security breach in the Cloud Service then LSI will notify Customer of the unauthorized disclosure of Customer Data within twenty-four (24) hours.

14.4 Security. Contractor shall exercise commercially reasonable efforts to provide and maintain up-to-date security in its provision of the hosting Services in order to prevent unauthorized access to and exposure, disclosure or “hacking” of, Customer Data contained in the hosted Application. Without limiting the generality of the preceding sentence, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, including without limitation: (i) access controls on electronic systems used to maintain, access, or transmit Customer Data; (ii) access restrictions on physical locations containing Customer Data; (iii) encryption of electronic Customer Data; (iv) dual control procedures; (v) testing and monitoring of electronic systems; (vi) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing Customer Data; (vii) processes to ensure the proper disposal of Customer Data pursuant to this Agreement; (viii) ensuring that all Contractor employees, agents, and Subcontractors are required to comply with all of the foregoing. Contractor shall review its data security precautions regularly, but no less than annually, and update and maintain them throughout the term of this Agreement to comply the applicable laws, regulations, technology changes, and best practices. Customer shall maintain reasonable security standards for its Authorized Users’ use of the SaaS Application.

14.5 Personal Data Processing. Personal Data contained in the SaaS Application shall be processed and handled as provided for in Schedule D (“Personal Data Processing Agreement for LSI Cloud Services”) of the Order Form, except as otherwise provided for in this Agreement.

14.5.1 Security Breach Notification. “Security Breach” has the meaning provided in Definitions section 1.37 (“Security Breach”) herein. In the event of any Security Breach, act, error, omission, negligence, misconduct or other breach of this Agreement by Contractor or any Subcontractor that compromises or is suspected to compromise the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative or organizational safeguards put in place by Contractor or any Subcontractor that relate to the protection of the security, confidentiality, or integrity of Customer Data, Contractor shall, as applicable:

(a) Provide notice to the Customer immediately following discovery, but no later than within 24 hours, of becoming aware of such occurrence or suspected occurrence. Contractor’s notice shall identify:

- (i) the nature of the unauthorized access, use or disclosure;
- (ii) the Customer Data accessed, used or disclosed;
- (iii) the person(s), party or parties who accessed, used and disclosed and/or received Customer Data (if known);
- (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
- (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure (to the extent known at that time).

(b) In the event of a suspected Security Breach, Contractor shall keep the Customer informed regularly of the progress of its investigation until the uncertainty is resolved;

(c) Contractor shall coordinate with the Customer in its breach response activities including without limitation:



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

- (i) Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
 - (ii) Promptly (within 2 business days) designate a contact person to whom the Customer will direct inquiries, and who will communicate Contractor responses to Customer inquiries;
 - (iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore Customer service(s) as directed by the Customer, and undertake appropriate response activities;
 - (iv) Provide status reports to the Customer on Security Breach response activities, either on a daily basis or a frequency approved by the Customer;
 - (v) Make all reasonable efforts to assist and cooperate with the Customer in its breach response efforts;
 - (vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in Customer-initiated meetings and/or conference calls regarding the Security Breach; and
 - (vii) Cooperate with Customer 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 reasonably required by Customer.
- (d) In the case of Personal Data, at Customer's sole election, Contractor will: (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse Customer for any costs in notifying the affected individuals;
- (e) In the case of Personal Data, Contractor will provide third-party credit- and identity-monitoring services to each of the affected individuals who comprise the Personal Data for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;
- (f) Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- (g) Without limiting Contractor's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Customer for any and all claims, including reasonable legal and investigation fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Customer in connection with the occurrence;
- (h) Recreate lost Customer Data in the manner and on the schedule set by Customer without charge to Customer; and
- (i) Provide to Customer a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.
- (j) Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the Customer's election) information that may include: name and contact information of Contractor's (or Customer's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

(k) Contractor shall retain and preserve Customer Data in accordance with the Customer's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the Customer to Contractor, independent of where the Customer Data is stored.

(l) Customer shall conduct all media communications, unless at its sole discretion, Customer elects for Contractor to do so (in consultation with the Customer), in relation to such Data Breach.

Article 15 FORCE MAJEURE; DISASTER RECOVERY.

15.1 Liability. No Party shall be liable to the other for a breach of the Agreement based on a delay in the performance of its obligations under this Agreement (other than for the payment of amounts due) if and to the extent such delay is caused by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, pandemic or any other cause beyond the reasonable control of such Party (a "Force Majeure Event").

15.2 Duration. In such event, the non-performing party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any party so delayed in its performance shall immediately, or as soon as feasible, notify the party to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

15.3 Effect. If any Force Majeure Event renders the Cloud Service unavailable for more than thirty (30) consecutive days, the other party may terminate the Agreement upon written notice to the performing party (in which case customer will receive a refund of prepaid fees starting from the beginning of the period of unavailability due to such conditions).

15.4 Disaster Recovery. In the event of a disaster, as defined below, Contractor will be responsible for providing disaster recovery services in accordance with Section 15.5 ("Disaster Recovery Plan") herein. Notwithstanding Section 15.1 ("Liability") above, a Force Majeure Event shall not excuse Contractor of its obligations to perform disaster recovery services as provided in this Section 15.4 ("Disaster Recovery"). In the event that a disaster occurs and Contractor fails to restore the online hosting services within 72 hours of the initial disruption to provision of the SaaS Application and SaaS Services, Customer may, in its discretion, deem such failure to be an Event of Default by Contractor incapable of cure, and Customer may immediately terminate this Agreement, and Customer shall be entitled to a full refund of the amount of the prepaid fees for the terminated subscription(s) calculated as of the effective date of termination, and a release from the obligation to pay fees due for periods after the effective date of termination. In addition, Customer shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default by Contractor incapable of cure pursuant to this Section 15.4 ("Disaster Recovery") herein, and Contractor shall pay to the Customer on demand all reasonable costs and expenses incurred by the Customer in effecting such cure. For purposes of this Agreement, a "disaster" shall mean an interruption in the online hosting services or the inability of Contractor to provide Customer with the SaaS Application and SaaS Services for any reason that could not be remedied by relocating the SaaS Application and online hosting services to a different physical location outside the proximity of Contractor's primary Data Center (but still within the United States as required by this Agreement).

15.5 Disaster Recovery Plan.

15.5.1 Contractor shall maintain a written disaster recovery plan and business continuation strategy for applicable Cloud Services to be implemented in the event of a disaster, a catastrophic failure, at the times and places deemed appropriate by Contractor. Contractor shall provide a business continuity and disaster recovery plan and shall ensure that it adheres to the recovery procedures, as agreed to by the parties and set forth in the SOW and/or SLA.



SECTION 1.
invenioLSI CLOUD SERVICES AGREEMENT

Party Signatures to this Agreement

IN WITNESS WHEREOF the parties have executed this Agreement per Board of **XXXX** Resolution # **XXXX** approved on **XXXX**. [See attached Approved Board of **XXXX** Resolution.]

invenioLSI

<CUSTOMER NAME>

APPROVED:

APPROVED:

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

<<CUSTOMER NAME>>

Contractor's Disclosure Form Regarding CUSTOMER Officials

To be completed by Contractor:

Name of Contractor *:	invenioLSI
Services to be performed under the Agreement*:	PER THE AGREEMENT
Schools/Locations where services are being performed*:	PER THE AGREEMENT
Total amount to be paid by the Customer Under this Agreement not to exceed*:	\$
Term of Agreement*:	FY XXXX - XXXX

**Provided for reference only; the provisions of the Agreement shall control in the event of any conflict with the language of this form.*

1. Are any of Contractor's employees (or owners) ALSO current CUSTOMER employees/Board members, or former CUSTOMER employees/Board members within the last one (1) year?
(Check "Yes" or "No" as applicable.)

NO. None of Contractor's employees (or owners) are **ALSO** current CUSTOMER employees/Board members, or former CUSTOMER employees/Board members within the last one (1) year.

YES. Contractor's employees (or owners) listed in the table below are **ALSO** current CUSTOMER employees/Board members, or former CUSTOMER employees/Board members within the last one (1) year. (Complete the table below. The list may be continued on an additional page as needed.)

<u>NAME</u> of current CUSTOMER employee/ Board member, or former CUSTOMER employee/Board member within the last one (1) year, who is ALSO Contractor's employee (or owner):	<u>JOB TITLE(S) AT CUSTOMER</u> of current CUSTOMER employee/Board member, or former CUSTOMER employee/Board member within the last one (1) year, who is ALSO Contractor's employee (or owner):	<u>DATE</u> on which individual left CUSTOMER employment/Board. <u>Or, if the individual is currently an CUSTOMER employee/Board member, write "current."</u>



SECTION 1. invenioLSI CLOUD SERVICES AGREEMENT

Certification by Contractor:

On behalf of Contractor, I hereby certify that, to Contractor's knowledge, the information provided in this form is true, accurate, and complete, and that during the term of this Agreement, if Contractor learns of information that differs from that provided above, including but not limited to the hiring of new personnel who are current CUSTOMER employees or Board members, or former CUSTOMER employees or Board members within the past one (1) year, Contractor will promptly update this form with the Customer.

Contractor's Signature

DATE

Print Name of Signatory

For CUSTOMER Office Use Only:

Received by: _____
(CUSTOMER staff initials)

Date received: _____

SAMPLE



SECTION 2. ORDER FORM FOR invenioLSI CLOUD SERVICES

Order Form for invenioLSI Cloud Services LSI Reference No. **XXX-001**

Between Labyrinth Solutions LLC d/b/a invenioLSI
303 Wyman Street, Suite 300
Waltham, MA 02451
("LSI")

And <<CUSTOMER NAME>>
<<ADDRESS LINE 1>>
<<ADDRESS LINE 2>>
<<ADDRESS LINE 3>>
("Customer")

1. ORDER FORM AND TABLE OF AGREEMENTS

This Order Form, when signed by LSI and by Customer (the "effective date"), becomes a binding agreement for the invenioLSI Cloud Service(s) listed in this Order Form.

This Order Form is governed by and incorporates the following documents in effect as of the Effective Date. This Order Form and all documents are listed in the table below in order of precedence, and collectively referred to as the "**Agreement**":

Agreement	Location
SECTION 1: 001-invenioLSI Cloud Services Agreement (CSA)	Attached
SECTION 2: ORDER FORM for invenioLSI Cloud Services	This Order Form XXX-001
SECTION 3: Service Level Agreement + Support Policy for invenioLSI Cloud Services ("SLA")(an "LSI Policy")	Attached
SECTION 4: Data Processing Agreement for invenioLSI Cloud Services(an "LSI Policy")	Attached
SECTION 5: invenioLSI Statement of Work (SOW)	Attached

Customer has had the opportunity to review the incorporated documents prior to executing this Order Form. All defined terms in the Agreement used in this Order Form have the meaning stated in the Agreement. All references to "Service" mean "Cloud Service", and to "Named Users" mean "Authorized Users."



SECTION 2.

ORDER FORM FOR invenioLSI CLOUD SERVICES

2. CLOUD SERVICE

2.1 Cloud Service Order.

The table shows the purchased Cloud Service, Metric, Initial Subscription Term and fees.

Required:

Period 1 From **XX/XX/XXXX** to **XX/XX/XXXX**:

invenioLSI Cloud Service **	Metric	Annual Fee	Product Start Date	Product End Date	Total Fee in USD
<<PRODUCT NAME>>					
<<PRODUCT NAME>>					
Total Net Fee (*)					

Optional: **XXXX**

Period 1 From **XX/XX/XXXX** to **XX/XX/XXXX**

invenioLSI Cloud Service **	Metric	Annual Fee	Product Start Date	Product End Date	Total Fee in USD
<<PRODUCT NAME>>					
<<PRODUCT NAME>>					
Total Net Fee (*)					

(*) plus applicable taxes

(**) This software includes annual cloud hosting fees.

2.2 Subscription Term

- (a) Customer's initial Subscription Term will begin on the start date and will be effective until the end date, unless earlier terminated in accordance with the terms of the Agreement.
- (b) The initial Subscription Term and any renewals and extensions thereof will automatically renew for terms equal in length to the immediately preceding term (if that term is thirty-six months or less) or for one year (if that term is longer than thirty-six months), subject to the parties' termination rights under the Agreement. Auto-renewal will not occur if Customer notifies LSI of its intention not to renew at least one month in advance of the expiration of the then-current term.

2.3 Excess Use.

Customer's use of the Cloud Service is subject to the Agreement. Any use of the Cloud Service that exceeds the scope permitted hereunder will be subject to the additional fees stated herein. Any such additional fees shall accrue from the date the excess use began. Customer and Supplier will execute an additional Order Form to document subscriptions for additional Usage Metrics and their volume. LSI may invoice, and Customer will pay for excess use based on the pricing set forth above.

3. CONSULTING SERVICES

Customer has purchased no Consulting Services under this Agreement. Any Consulting Services that may be desired by Customer during the Subscription Term or any renewal term or extension thereof



SECTION 2.

ORDER FORM FOR invenioLSI CLOUD SERVICES

shall be added by written modification to the Agreement, executed and approved by the Parties in the same manner as this Order Form.

4. PAYMENT AND INVOICES

4.1 Fees and Invoicing.

Unless stated otherwise, fees for the Cloud Service(s) will be invoiced by LSI and paid by Customer upfront on an annual basis with payment for contract year 1 fees due at Customer's signing on or before XX/XX/XXXX. If applicable, fees for any Consulting Services will be invoiced by LSI and paid by Customer as stated in Section 3 unless otherwise stated in the applicable scope document. LSI may provide invoices to an email address provided by Customer. Fees for non-recurring services will be invoiced by LSI on a one-time basis and paid by Customer within thirty (30) days of Customer's receipt. Except for fee increases applied under Sections 2.3 and 4.2, Cloud Service(s) fees for renewal terms will be equal to the fees for the immediately preceding term for the same Cloud Service, Usage Metrics and volume. Customer will reimburse LSI for all pre-approved (by Customer) and appropriately documented travel and related expenses incurred by LSI in performing any support for the Cloud Service. Consulting Services fees are inclusive of travel expenses.

4.2 Fee Increases.

At the beginning of each renewal term, LSI may increase fees to reflect annual increases in consumer prices or costs. This increase will not exceed the greater of the percentage stated in the most recent consumer price index selected by LSI or 3.3% per annum. The increase is applied on a cumulative, year-over-year basis beginning on either the start of the preceding term or date of last increase, whichever is later. Not raising fees is not a waiver of LSI's right to do so. LSI may increase fees if Customer elects to reduce the Cloud Service, Usage Metrics or volume for any renewal term.

4.3 Payment.

Customer will pay to LSI all fees due within thirty days of date of invoice. Unpaid fees will accrue interest at the maximum legal rate. Customer purchase orders are for administrative convenience and not a condition of payment. Payment is not dependent upon completion of any implementation or other services.

5. AUTHORIZED ADMINISTRATORS

Customer contacts for order confirmation and system notices are:

Order Confirmation recipient name:	XXX
Order Confirmation recipient e-mail:	XXX
System Provisioning Notification recipient name:	XXX
System Provisioning Notification recipient e-mail:	XXX

6. CUSTOMER LOCATION

Customer has provided the following primary access location:

XXX
XXX
XXX
XXX

This is the primary (but not the only) location from which Customer will access the Cloud Service. Customer acknowledges that the primary access location for the Cloud Service may have sales tax implications. Customer's failure to provide LSI with its VAT and/or GST number may also have sales tax implications. If Customer does not provide a primary access location, LSI will incorporate a default primary access location to Customer's sold-to address.



SECTION 2. ORDER FORM FOR invenioLSI CLOUD SERVICES

7. SCHEDULED DOWNTIME

Scheduled Downtime of the invenioLSI Cloud Service shall be between 12 AM Pacific Standard Time and 4 AM Pacific Standard Time once a week or as otherwise agreed upon by Customer and LSI.

8. ANALYSES

LSI or LSI Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Cloud Service and, if applicable, Consulting Services. Analyses will anonymize and aggregate all such data and information, and shall be the proprietary, confidential and wholly- owned materials of LSI. Examples of how analyses may be used include: optimizing resources and support; research and development; automated processes that enable continuous improvement, performance optimization and development of new LSI products and services; verification of security and data integrity; internal demand planning; and data products such as industry trends and developments, indices and anonymous benchmarking.

[SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.]



SECTION 2.
ORDER FORM FOR invenioLSI CLOUD SERVICES

Accepted By:

<<CUSTOMER NAME>>

(Customer)

Accepted By:

invenioLSI

(LSI or Contractor)

APPROVED:

APPROVED:

By: _____

By: _____

Authorized Signature

Authorized Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



SECTION 3. SERVICE LEVEL AGREEMENT AND SUPPORT POLICY FOR invenioLSI CLOUD SERVICES

invenioLSI Service Level Agreement and Support Policy for invenioLSI Cloud Services

This Service Level Agreement for invenioLSI Cloud Services sets forth the applicable Service Levels for the Cloud Services and Server Provisioning for which Customer has contracted with invenioLSI.

1. DEFINITIONS

Capitalized terms used in this document but not defined herein are defined in the Agreement.

"Agreed Downtime" means any Downtime requested by LSI or Customer and mutually agreed by the parties.

"Business Day" means any days from Monday to Friday with the exception of the public holidays observed at Customer's Primary Access Location.

"Downtime" means the Total Minutes in the Month during which the Cloud Service (or Servers for Server Provisioning) does not respond to a request from LSI's Point of Demarcation for the data center providing the Cloud Service (or Server for Server Provisioning), excluding Excluded Downtime. **"Emergency Downtime"** means downtime during critical patch deployment and critical operating system upgrades as described in the invenioLSI Cloud Services Supplemental Terms and Conditions.

"Excluded Downtime" has the meaning set forth in TABLE 2, below.

"Incident" means unplanned interruptions or material reduction in service quality reported by Authorized Users.

"Incident Reaction Time" means the amount of time (e.g. in hours or minutes) between the time that the LSI Support Level 1 organization is notified of the Customer-reported Incident and the first action taken by an LSI support person, familiar with the Customer's environment, to repair the Incident.

"Local Time" means the time zone in Customer's Primary Access Location.

"Month" means a calendar month.

"Monthly Service Fees" means the monthly (or 1/12th of the annual fee) Services Fee paid for the Cloud Services which did not meet the System Availability SLA.

"Scheduled Downtime" means the four (4) hours a week during which the Cloud Service is not available, as agreed to by Customer and LSI.

"Service Credit" means a credit calculated as described in Section 2 and Section 5(a) of this Service Level Agreement.

"System" means one or more interrelated and interdependent components such as databases, servers, networks, loadbalancers, webdispatchers, etc. which when taken as a whole are used to operate an individual tier. Each combination of components used within each tier is equivalent to one system. System Availability is measured at the tier level. For Server Provisioning, System as used herein means Server, as defined in the Order Form.

"Total Minutes in the Month" are measured 24 hours at 7 days a week during a Month.

"UTC" means Coordinated Universal Time standard.



SECTION 3. SERVICE LEVEL AGREEMENT AND SUPPORT POLICY FOR invenioLSI CLOUD SERVICES

2. SYSTEM AVAILABILITY

The System Availability Service Level for invenioLSI Cloud Services ("**SA SLA**") sets forth the System Availability applicable to the Computing Environment (and Server for Server Provisioning). The SA SLA shall apply after System handover to Customer.

The SA SLA shall not apply to Licensed Software licensed by Customer from a third party unless otherwise expressly set forth in the Order Form.

"**System Availability**" for each System is calculated as follows:

$$\text{System Availability Percentage} = \left[\frac{\text{Total Minutes in the Month} - \text{Downtime}}{\text{Total Minutes in the Month}} \right] * 100 \%$$

TABLE 1

Service Level	Service Credit*
PRD: 99.5% System Availability NON-PRD: 95.0% System Availability Server Provisioning: 99.5% System Availability	<u>Cloud Production:</u> 2% of Monthly Service Fees for Cloud Services for each 0.1% below the SA SLA <u>Server Provisioning:</u> \$1,500 per Month in aggregate for any and all instances below the SA SLA

*Subject to the monthly maximum Service Credit amounts set forth in Section 5 below.

TABLE 2:

Excluded Downtime	Total Minutes in the Month attributable to: (i) Scheduled Downtime, as described in the Order Form and as set forth below (ii) Agreed Downtime (iii) Emergency Downtime (iv) Downtime caused by factors outside of LSI's reasonable control such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised (see examples below this table) (v) Downtime of a NON-PRD system caused by using the NON-PRD for failover/to repair to a PRD system
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SECTION 3. SERVICE LEVEL AGREEMENT AND SUPPORT POLICY FOR invenioLSI CLOUD SERVICES

Scheduled Downtime	Scheduled Downtime is authorized at the mutually agreed time listed in the Order Form, not to exceed four (4) hours per week per system, excluding functional updates.
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The following examples include but are not limited to what is beyond LSI's reasonable control:

- a) Customer's failure to meet Customer's responsibilities (including ordering maintenance for the Licensed Software, using a version or release of the Licensed Software and/or Subscription Software on current maintenance) as set forth in the Agreement
- b) Downtime caused by Customer
- c) Interruptions as a result of requirements stipulated by a third-party manufacturer of the Licensed Software
- d) Interruptions or shutdowns of the Computing Environment, or portions thereof (or Servers for Server Provisioning) resulting from the quality of the Licensed Software provided by the Customer and/or Customer's customizations or modifications of the Licensed Software, Subscription Software or Computing Environment (or Servers for Server Provisioning), unless this is the responsibility of LSI under this Agreement.

Restore times of user data (recovery of database data from a media backup) where LSI was not the root cause for the required restoration.

3. **BACKUP AND CLOUD INCIDENT REACTION TIME (not applicable to Server Provisioning)**

Description	Computer Environment segment to which Service Level applies	Service Levels
Backup Frequency and retention period for Databases	PRD	Database backup every 4hours. Daily full backup and log file backup per LSI product standard. 30 days retention time. Backup of the PRD will be replicated to an alternate US based data center or US based Location.
	NON-PRD	Weekly full backup and log file backup per LSI product standard. 14 days retention time. Backup of the NON-PRD will be replicated to an alternate data center or location.
Long Term Backup*	PRD and/or NON-PRD	Daily full back up – 6 months retention time Monthly full back up – 1 year retention time Quarterly full back up – 1 year retention time Yearly full back up – up to 5 years retention time
Backup Frequency and retention period for File systems	PRD	Monthly full backup and daily incremental. Two months retention time. Backup of the PRD will be replicated to an alternate data center or location.
	NON-PRD	Monthly full backup and daily incremental. Two months retention time. Backup of the NON-PRD will be replicated to an alternate data center or location.
Incident Reaction Time for Incident Management	Incident Priority Very High	20 minutes (7x24) and problem determination action plan within 4hrs for PRD
	Incident Priority High	2 hours (7x24) for PRD 4 hours [Local Time on Business Days] for NON-PRD
	Incident Priority Medium	4 hours [Local Time on Business Days] for PRD and NON-PRD



SECTION 3. SERVICE LEVEL AGREEMENT AND SUPPORT POLICY FOR invenioLSI CLOUD SERVICES

	Incident Priority Low	1 Business Day for PRD and NON-PRD
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* The retention periods for Long Term Backup will end at the earlier of the retention time set forth herein or the end of Customer's Cloud subscription term.

4. **INCIDENT PRIORITIES**

The following priority levels apply to all Incidents (such priority to be assigned by Customer, and which may be re-assigned by LSI based on the criteria below and acting reasonably):

(a) Very High: An Incident should be categorized with the priority "Very High" if the incident reported has very serious consequences for normal business processes or IT processes related to core business processes, and urgent work cannot be performed. This is generally caused by the following circumstances:

- A PRD system is completely down.
- The imminent go-live or upgrade is jeopardized.
- The core business processes of Customer are seriously affected.
- A workaround is not available.

The Incident requires immediate processing because the malfunction may cause serious losses.

(b) High: An Incident should be categorized with the priority "High" if normal business processes are seriously affected. Necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the Computing Environment that are required immediately. The Incident is to be processed as quickly as possible because a continuing malfunction can seriously disrupt the entire productive business flow.

(c) Medium: An Incident should be categorized with the priority "Medium" if normal business processes are affected. The problem is caused by incorrect or inoperable functions in the Computing Environment. A message should be categorized with the priority "Medium" if normal business transactions are affected.

(d) Low: An Incident should be categorized with the priority "Low" if the problem has little or no effect on normal business processes. The problem is caused by incorrect or inoperable functions in the Computing Environment that are not required daily or are rarely used.

5. **SERVICE LEVEL REPORTING**

LSI shall track and report to Customer the Service Levels set forth herein in a monthly summary report. **(a)** Customer must notify LSI of any claims for any Service Credits within one (1) month after receipt of the monthly System Availability report by filing a support ticket with LSI.

(a) In the event that one or more of the Services Levels set forth herein are not met, Customer may notify the LSI Account Manager and request to analyze Service Levels metric statistics based on the monthly summary report provided by LSI.

(b) LSI will then promptly (i) determine the root cause or possible root cause of the failure (if known) to meet the Service Level, and (ii) unless failure is excused, develop a corrective action plan, and submit such plan to Customer for written approval (which will not be unreasonably withheld or delayed) and, following Customer's written approval implement the plan in a reasonable period of time (and in accordance with any agreed timescales).

(c) If applicable, LSI will provide the specific Service Credit as described in Section 5 below.

(d) LSI will be relieved of its obligation to pay applicable Service Credits and will not be in breach of the Service Level where the root cause analysis (as reasonably performed by LSI)



SECTION 3. SERVICE LEVEL AGREEMENT AND SUPPORT POLICY FOR invenioLSI CLOUD SERVICES

indicates the failure to meet the relevant Service Level was caused by the Customer and shall therefore be treated as Excluded Downtime. In the event that Customer disagrees with the root cause analysis, the parties will discuss the root cause analysis in accordance with the escalation procedure described in the Cloud Supplement.

6. **SERVICE LEVEL FAILURES**

(a) **Service Credits.** Subject to Section 2 above, if and to the extent LSI fails to meet the System Availability Service Level set forth in Section 2, Customer is entitled to a Service Credit which is calculated as the sum of the Service Credits for NON-PRD, PRD and Server Provisioning, for LSI's failure to meet the respective System Availability Service Level. Under no circumstances will the total maximum Service Credits: (i) for any one month, exceed an aggregate of 20% of the Cloud Service Fee for that month across all the Systems at 99.9% SA SLA, and an aggregate of 100% of the Cloud Service Fee for that month across all SA SLAs; and, (ii) for any given contract year, exceed in the aggregate an amount equal to one-third of the annual Cloud Service Fee charged for the contract year (or one third of the total Cloud Service Fee charged if the term as defined in the applicable Order Form is less than one (1) year). Customer acknowledges that the Service Credits are the sole and exclusive remedy for LSI's failure to meet the specified Service Level, except to the extent prohibited by applicable law.

(b) When Customer's entitlement of the Service Credit is confirmed by LSI in writing (email permitted), LSI will apply such credit to a future invoice relating to the Cloud Service or provide a refund if no future invoice is due under the Agreement.

(c) **Termination.** In the event of LSI fails to meet the SA SLA for PRD Computing Environment as specified in Section 2 above for three (3) consecutive months, Customer may terminate the applicable Order Form by providing LSI with written notice within thirty (30) days of Customer's receipt of the respective Service Level report. Termination shall become effective one (1) month after LSI's receipt of such notice (or any later date set out by Customer in its notice). For the avoidance of doubt, this termination right shall supersede any and all other termination provision in the GTC for failure to meet an SLA, and such termination right from the GTC shall not apply.



SECTION 4. DATA PROCESSING AGREEMENT for Cloud Services

DATA PROCESSING AGREEMENT FOR invenioLSI ("LSI") CLOUD SERVICES

1. DEFINITIONS

- 1.1. **"Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to LSI be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 1.2. **"Data Protection Law"** means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement.
- 1.3. **"Data Subject"** means an identified or identifiable natural person as defined by Data Protection Law.
- 1.4. **"EEA"** means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
- 1.5. **"GDPR"** means the General Data Protection Regulation 2016/679.
- 1.6. **"My Trust Center"** means information available on the SAP support portal (see: <https://support.sap.com/en/my-support/trust-center.html>) or the SAP agreements website (see: <https://www.sap.com/about/trust-center/agreements.html>) or any subsequent website(s) made available by LSI to Customer.
- 1.7. **"New SCC Relevant Transfer"** means a transfer (or an onward transfer) to a Third Country of Personal Data that is either subject to GDPR or to applicable Data Protection Law and where any required adequacy means under GDPR or applicable Data Protection Law can be met by entering into the New Standard Contractual Clauses.
- 1.8. **"New Standard Contractual Clauses"** means the unchanged standard contractual clauses, published by the European Commission, reference 2021/914 or any subsequent final version thereof which shall automatically apply. To avoid doubt Modules 2 and 3 shall apply as set out in Section 8.
- 1.9. **"Personal Data"** means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is:
 - a) entered by Customer or its Authorized Users into or derived from their use of the Cloud Service; or
 - b) supplied to or accessed by LSI or its Subprocessors in order to provide support under the Agreement.
 Personal Data is a sub-set of Customer Data (as defined under the Agreement).
- 1.10. **"Personal Data Breach"** means a confirmed:
 - a) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or
 - b) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or DataSubjects.
- 1.11. **"Processor"** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
- 1.12. **"Schedule"** means the numbered Appendix with respect to the Standard Contractual Clauses (2010) and the numbered Annex with respect to the New Standard Contractual Clauses.
- 1.13. **"Standard Contractual Clauses (2010)"** means the Standard Contractual Clauses (processors) published by the European Commission, reference 2010/87/EU.
- 1.14. **"Subprocessor" or "sub-processor"** means LSI Affiliates, SAP SE, SAPSE Affiliates and third parties engaged by LSI, SAP SE or SAP SE's Affiliates in connection with the Cloud Service and which process Personal Data in accordance with this DPA.



SECTION 4.

DATA PROCESSING AGREEMENT for Cloud Services

1.15. **“Technical and Organizational Measures”** means the technical and organizational measures for the relevant Cloud Service published on My Trust Center (see: <https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?search=Technical%20Organizational%20Measures>).

1.16. **“Third Country”** means any country, organization or territory not acknowledged by the European Union under Article 45 of GDPR as a safe country with an adequate level of data protection.

2. BACKGROUND

2.1. Purpose and Application

2.1.1. This document (**“DPA”**) is incorporated into the Agreement and forms part of a written (including in electronic form) contract between LSI and Customer.

2.1.2. This DPA applies to Personal Data processed by LSI and its Subprocessors in connection with its provision of the Cloud Service.

2.1.3. This DPA does not apply to non-production environments of the Cloud Service if such environments are made available by LSI. Customer shall not store Personal Data in such environments.

2.2. Structure

Schedules 1 and 2 are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects (Schedule 1) and the applicable Technical and Organizational Measures (Schedule 2).

2.3. Governance

2.3.1. LSI acts as a Processor and Customer and those entities that it permits to use the Cloud Service act as Controllers under the DPA.

2.3.2. Customer acts as a single point of contact and shall obtain any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use LSI as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller using the Cloud Service. Where LSI informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the Cloud Service. Customer shall forward such information and notices to the relevant Controllers.

3. SECURITY OF PROCESSING

3.1. Applicability of the Technical and Organizational Measures

LSI has implemented and will apply the Technical and Organizational Measures. Customer has reviewed such measures and agrees that as to the Cloud Service selected by Customer in the Order Form the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.

3.2. Changes

3.2.1. LSI applies the Technical and Organizational Measures to LSI's entire customer base hosted out of the same data center or receiving the same Cloud Service. LSI may change the Technical and Organizational Measures at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

3.2.2. LSI will publish updated versions of the Technical and Organizational Measures on My Trust Center and where available Customer may subscribe to receive e-mail notification of such updated versions.

4. LSI OBLIGATIONS

4.1. Instructions from Customer



SECTION 4.

DATA PROCESSING AGREEMENT for Cloud Services

LSI will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and each use of the Cloud Service then constitutes further instructions. LSI will use reasonable efforts to follow any other Customer instructions, as long as they are required by Data Protection Law, technically feasible and do not require changes to the Cloud Service. If any of the before-mentioned exceptions apply, or LSI otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, LSI will immediately notify Customer (email permitted).

4.2. Processing on Legal Requirement

LSI may also process Personal Data where required to do so by applicable law. In such a case, LSI shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

4.3. Personnel

To process Personal Data, LSI and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. LSI and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.

4.4. Cooperation

4.4.1. At Customer's request, LSI will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding LSI's processing of Personal Data or any Personal Data Breach.

4.4.2. If LSI receives a request from a Data Subject in relation to the Personal Data processing hereunder, LSI will promptly notify Customer (where the Data Subject has provided information to identify the Customer) via e-mail and shall not respond to such request itself but instead ask the Data Subject to redirect its request to Customer.

4.4.3. In the event of a dispute with a Data Subject as it relates to LSI's processing of Personal Data under this DPA, the Parties shall keep each other informed and, where appropriate, reasonably co-operate with the aim of resolving the dispute amicably with the Data Subject.

4.4.4. LSI shall provide functionality for production systems that supports Customer's ability to correct, delete or anonymize Personal Data from a Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, LSI will correct, delete or anonymize any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.

4.5. Personal Data Breach Notification

LSI will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. LSI may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by LSI.

4.6. Data Protection Impact Assessment

If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, LSI will provide such documents as are generally available for the Cloud Service (for example, this DPA, the Agreement, Audit Reports and Certifications). Any additional assistance shall be mutually agreed between the Parties.

5. DATA EXPORT AND DELETION

5.1. Export and Retrieval by Customer

During the Subscription Term and subject to the Agreement, Customer can access its Personal Data at any time. Customer may export and retrieve its Personal Data in a standard format. Export and retrieval may be



SECTION 4.

DATA PROCESSING AGREEMENT for Cloud Services

subject to technical limitations, in which case LSI and Customer will find a reasonable method to allow Customer access to Personal Data.

5.2. Deletion

Before the Subscription Term expires, Customer may use LSI's self-service export tools (as available) to perform a final export of Personal Data from the Cloud Service (which shall constitute a "return" of Personal Data). At the end of the Subscription Term, Customer hereby instructs LSI to delete the Personal Data remaining on servers hosting the Cloud Service within a reasonable time period in line with Data Protection Law (not to exceed 6 months) unless applicable law requires retention.

6. CERTIFICATIONS AND AUDITS

6.1. Customer Audit

Customer or its independent third party auditor reasonably acceptable to LSI (which shall not include any third party auditors who are either a competitor of LSI or not suitably qualified or independent) may audit LSI's control environment and security practices relevant to Personal Data processed by LSI only if:

- a) LSI has not provided sufficient evidence of its compliance with the Technical and Organizational Measures that protect the production systems of the Cloud Service through providing either: (i) a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or (ii) a valid ISAE3402 or ISAE3000 or other SOC1-3 attestation report. Upon Customer's request audit reports or ISO certifications are available through the third party auditor or LSI;
- b) a Personal Data Breach has occurred;
- c) an audit is formally requested by Customer's data protection authority; or
- d) provided under mandatory Data Protection Law conferring Customer a direct audit right and provided that Customer shall only audit once in any 12 month period unless mandatory Data Protection Law requires more frequent audits.

6.2. Other Controller Audit

Any other Controller may assume Customer's rights under Section 6.1 only if it applies directly to the Controller and such audit is permitted and coordinated by Customer. Customer shall use all reasonable means to combine audits of multiple other Controllers to avoid multiple audits, unless the audit must be undertaken by the other Controller itself under Data Protection Law. If several Controllers whose Personal Data is processed by LSI on the basis of the Agreement require an audit, Customer shall use all reasonable means to combine the audits and to avoid multiple audits.

6.3. Scope of Audit

Customer shall provide at least 60 days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice. The frequency and scope of any audits shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited in time to a maximum of 3 business days. Beyond such restrictions, the parties will use current certifications or other audit reports to avoid or minimize repetitive audits. Customer shall provide the results of any audit to LSI.

6.4. Cost of Audits

Customer shall bear the costs of any audit unless such audit reveals a material breach by LSI of this DPA, then LSI shall bear its own expenses of an audit. If an audit determines that LSI has breached its obligations under the DPA, LSI will promptly remedy the breach at its own cost.

7. SUBPROCESSORS

7.1. Permitted Use

LSI is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:



SECTION 4.

DATA PROCESSING AGREEMENT for Cloud Services

- a) LSI or LSI SE on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. LSI shall be liable for any breaches by the Subprocessor in accordance with the terms of this Agreement;
- b) LSI will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA; and
- c) LSI's list of Subprocessors in place on the effective date of the Agreement is published by LSI on My Trust Center or LSI will make it available to Customer upon request, including the name, address and role of each Subprocessor LSI uses to provide the Cloud Service.

7.2. New Subprocessors

LSI's use of Subprocessors is at its discretion, provided that:

- a) LSI will inform Customer in advance (by email or by posting on the My Trust Center) of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor; and
- b) Customer may object to such changes as set out in Section 7.3.

7.3. Objections to New Subprocessors

7.3.1. If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the Agreement (limited to the Cloud Service for which the new Subprocessor is intended to be used) on written notice to LSI. Such termination shall take effect at the time determined by the Customer which shall be no later than 30 days from the date of LSI's notice to Customer informing Customer of the new Subprocessor. If Customer does not terminate within this 30 day period, Customer is deemed to have accepted the new Subprocessor.

7.3.2. Within the 30 day period from the date of LSI's notice to Customer informing Customer of the new Subprocessor, Customer may request that the parties discuss in good faith a resolution to the objection. Such discussions shall not extend the period for termination and do not affect LSI's right to use the new Subprocessor(s) after the 30 day period.

7.3.3. Any termination under this Section 7.3 shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

7.4. Emergency Replacement

LSI may replace a Subprocessor without advance notice where the reason for the change is outside of LSI's reasonable control and prompt replacement is required for security or other urgent reasons. In this case, LSI will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 7.2 applies accordingly.

8. INTERNATIONAL PROCESSING

8.1. Conditions for International Processing

LSI shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.

8.2. Applicability of the Standard Contractual Clauses (2010)

8.2.1. Where, for the period up to and including 26 September 2021, Personal Data of a Controller that is subject to GDPR is processed in a Third Country, or where Personal Data of a Swiss or United Kingdom based Controller or another Controller is processed in a Third Country and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into Standard Contractual Clauses (2010), then:

- a) LSI and Customer enter into the Standard Contractual Clauses (2010);



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- b) Customer joins the Standard Contractual Clauses (2010) entered into by LSI or LSI SE and the Subprocessor as an independent owner of rights and obligations; or
 - c) other Controllers whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into Standard Contractual Clauses (2010) with LSI or the relevant Subprocessors in the same manner as Customer in accordance with Section 8.2.1 a) and b) above. In such case, Customer will enter into the Standard Contractual Clauses (2010) on behalf of the other Controllers.
- 822 The Standard Contractual Clauses (2010) shall be governed by the law of the country in which the relevant Controller is established.
- 823 Where applicable Data Protection Law adopts the New Standard Contractual Clauses as meeting any required adequacy means as an alternative or update to the Standard Contractual Clauses (2010) then the New Standard Contractual Clauses shall apply in accordance with Section 8.3.
- 8.3. Applicability of New Standard Contractual Clauses
 - 831. The following shall apply with effect from 27 September 2021 and shall solely apply in respect of New SCC Relevant Transfers:
 - 8.3.1.1. Where LSI is not located in a Third Country and acts as a data exporter, LSI (or LSI SE on its behalf) has entered in to the New Standard Contractual Clauses with each Subprocessor as the data importer. Module 3 (Processor to Processor) of the New Standard Contractual Clauses shall apply to such New SCC Relevant Transfers.
 - 8.3.1.2. Where LSI is located in a Third Country:

LSI and Customer hereby enter into the New Standard Contractual Clauses with Customer as the data exporter and LSI as the data importer which shall apply as follows:

 - a) Module 2 (Controller to Processor) shall apply where Customer is a Controller; and
 - b) Module 3 (Processor to Processor) shall apply where Customer is a Processor. Where Customer acts as Processor under Module 3 (Processor to Processor) of the New Standard Contractual Clauses, LSI acknowledges that Customer acts as Processor under the instructions of its Controller(s).
 - 832 Other Controllers or Processors whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into the New Standard Contractual Clauses with LSI in the same manner as Customer in accordance with Section 8.3.1.2 above. In such case, Customer enters into the New Standard Contractual Clauses on behalf of the other Controllers or Processors.
 - 833 With respect to a New SCC Relevant Transfer, on request from a Data Subject to the Customer, Customer may make a copy of Module 2 or 3 of the New Standard Contractual Clauses entered into between Customer and LSI (including the relevant Schedules), available to Data Subjects.
 - 834 The governing law of the New Standard Contractual Clauses shall be the law of Germany.
- 8.4. Relation of the Standard Contractual Clauses to the Agreement

Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses (2010) or the New Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and Subprocessor rules, such specifications also apply in relation to the Standard Contractual Clauses (2010) and the New Standard Contractual Clauses.
- 8.5. Third Party Beneficiary Right under the New Standard Contractual Clauses
 - 851. Where Customer is located in a Third Country and acting as a data importer under Module 2 or Module 3 of the New Standard Contractual Clauses and LSI is acting as Customer's sub-processor under the applicable Module, the respective data exporter shall have the following third party beneficiary right:
 - 852 In the event that Customer has factually disappeared, ceased to exist in law or has become insolvent (in all cases without a successor entity that has assumed the legal obligations of the Customer by contract or by operation of law), the respective data exporter shall have the right to terminate the affected Cloud Service



SECTION 4. DATA PROCESSING AGREEMENT for Cloud Services

solely to the extent that the data exporter's Personal Data is processed. In such event, the respective data exporter also instructs LSI to erase or return the Personal Data.

9. DOCUMENTATION; RECORDS OF PROCESSING

- 9.1. Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations relating to maintaining records of processing.

Schedule 1 Description of the Processing

This Schedule 1 applies to describe the Processing of Personal Data for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

1. A. LIST OF PARTIES

- 1.1. Under the Standard Contractual Clauses (2010)

- 1.1.1. Data Exporter

The data exporter under the Standard Contractual Clauses (2010) is the Customer who subscribed to a Cloud Service that allows Authorized Users to enter, amend, use, delete or otherwise process Personal Data. Where the Customer allows other Controllers to also use the Cloud Service, these other Controllers are also data exporters.

- 1.1.2. Data Importer

LSI and its Subprocessors that provide and support the Cloud Service are data importers under the Standard Contractual Clauses (2010).

- 1.2. Under the New Standard Contractual Clauses

- 1.2.1. Module 2: Transfer Controller to Processor

Where LSI is located in a Third Country, Customer is the Controller and LSI is the Processor, then Customer is the data exporter and LSI is the data importer.

- 1.2.2. Module 3: Transfer Processor to Processor

Where LSI is located in a Third Country, Customer is a Processor and LSI is a Processor, then Customer is the data exporter and LSI is the data importer.

2. B. DESCRIPTION OF TRANSFER

- 2.1. Data Subjects

Unless provided otherwise by the data exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, business partners or other individuals having Personal Data stored in the Cloud Service, transmitted to, made available to, accessed or otherwise processed by the data importer.

- 2.2. Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data per Cloud Service subscribed. Customer can configure the data fields during implementation of the Cloud Service or as otherwise provided by the Cloud Service. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data that Authorized Users enter into the Cloud Service and may include bank account data, credit or debit card data.



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- 2.3. Special Data Categories (if agreed)
 - 2.3.1. The transferred Personal Data may comprise special categories of personal data set out in the Agreement ("**Sensitive Data**"). LSI has taken Technical and Organizational Measures as set out in Schedule 2 to ensure a level of security appropriate to protect also Sensitive Data.
 - 2.3.2. The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):
 - a) training of personnel;
 - b) encryption of data in transit and at rest;
 - c) system access logging and general data access logging.
 - 2.3.3. In addition, the Cloud Services provide measures for handling of Sensitive Data as described in the Documentation.
- 2.4. Purposes of the data transfer and further processing; Nature of the processing
 - 2.4.1. The transferred Personal Data is subject to the following basic processing activities:
 - a) use of Personal Data to set up, operate, monitor and provide the Cloud Service (including operational and technical support);
 - b) continuous improvement of service features and functionalities provided as part of the Cloud Service including automation, transaction processing and machine learning;
 - c) provision of embedded Professional Services;
 - d) communication to Authorized Users;
 - e) storage of Personal Data in dedicated data centers (multi-tenant architecture);
 - f) release, development and upload of any fixes or upgrades to the Cloud Service;
 - g) back up and restoration of Personal Data stored in the Cloud Service;
 - h) computer processing of Personal Data, including data transmission, data retrieval, data access;
 - i) network access to allow Personal Data transfer;
 - j) monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database;
 - k) security monitoring, network-based intrusion detection support, penetration testing; and
 - l) execution of instructions of Customer in accordance with the Agreement.
 - 2.4.2. The purpose of the transfer is to provide and support the Cloud Service. LSI and its Subprocessors may support the Cloud Service data centers remotely. LSI and its Subprocessors provide support when a Customer submits a support ticket as further set out in the Agreement.
- 2.5. Additional description in respect of the New Standard Contractual Clauses:
 - 2.5.1. Applicable Modules of the New Standard Contractual Clauses
 - a) Module 2: Transfer Controller to Processor
 - b) Module 3: Transfer Processor to Processor
 - 2.5.2. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing
In respect of the New Standard Contractual Clauses, transfers to Subprocessors shall be on the same basis as set out in the DPA.
 - 2.5.3. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).
Transfers shall be made on a continuous basis.



SECTION 4.

DATA PROCESSING AGREEMENT for Cloud Services

- 2.5.4. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period.

Personal Data shall be retained for the duration of the Agreement and subject to Section 5.2 of the DPA.

3. C. COMPETENT SUPERVISORY AUTHORITY

- 3.1. In respect of the New Standard Contractual Clauses:

3.1.1. Module 2: Transfer Controller to Processor

3.1.2. Module 3: Transfer Processor to Processor

- 3.2. Where Customer is the data exporter, the supervisory authority shall be the competent supervisory authority that has supervision over the Customer in accordance with Clause 13 of the New Standard Contractual Clauses.

Schedule 2 Technical and Organizational Measures

This Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

LSI will apply and maintain the Technical and Organizational Measures.

To the extent that the provisioning of the Cloud Service comprises New SCC Relevant Transfers, the Technical and Organizational Measures set out in Schedule 2 describe the measures and safeguards which have been taken to fully take into consideration the nature of the personal data and the risks involved. If local laws may affect the compliance with the clauses, this may trigger the application of additional safeguards applied during transmission and to the processing of the personal data in the country of destination (if applicable: encryption of data in transit, encryption of data at rest, anonymization, pseudonymization).

**MASTER AGREEMENT NUMBER
MA 18P 23053100000000000165 FOR
EPROCUREMENT SOLUTIONS AND
SERVICES Between the State of Maine and
Labyrinth Solutions, LLC d/b/a invenioLSI**



**Attachment C:
MASTER AGREEMENT PRICING**

I. Overview

The below pricing projections do not limit a consumer's ability to negotiate a lower price. These prices are to act as a maximum amount for any State or Agency that enters into an agreement with the vendor for the aforementioned services. The below costs represent the implementation costs.

Cost Workbook Section	Labyrinth Solutions, LLC		
Scenario One Implementation– Large State Pricing	\$2,652,968.94	Managed Services – Large State Pricing (10 Years)	\$950,400.00
Scenario One Implementation – Medium State Pricing	\$2,292,734.08	Managed Services – Medium State Pricing (10 Years)	\$768,000.00
Scenario One Implementation– Small State Pricing	\$1,855,340.30	Managed Services – Small State Pricing (10 Years)	\$585,600.00

II. Pricing Breakdown

The breakdown of Labyrinth Solutions, LLC d/b/a invenioLSI cost projections can be found at [LSI's Cost Proposal](#). The breakdown includes overall cost proposals, solution implementation costs, annual licensing costs including maintenance, and managed services support costs.

III. Cost Scoring

The scoring breakdown for Labyrinth Solutions, LLC d/b/a invenioLSI, including the proposed discounts can be found at the [LSI's Scorebook](#).

**MASTER AGREEMENT NUMBER
MA 18P 23053100000000000165 FOR
EPROCUREMENT SOLUTIONS AND SERVICES
Between the State of Maine and
Labyrinth Solutions, LLC d/b/a invenioLSI**



IV. Price Changes

Vendor agrees that the prices and discounts listed in Attachment C: Master Agreement Pricing will act as the prices for services provided. Changes in prices will be outside the scope of this agreement unless they are posted on the NASPO Valuepoint Labyrinth Solutions, LLC d/b/a invenioLSI's Master Agreement web page.