

**GREAT LAKES WATER AUTHORITY
MASTER AGREEMENT FOR TECHNOLOGY SERVICES**

This Master Agreement for Technology Services (“Agreement”) is effective as of the date last executed, unless otherwise specified.

By and Between:	And:
[Vendor] (“Vendor”), a [state] [Incorporation, LLC, Partnership, etc.]	Great Lakes Water Authority (“GLWA” or “Customer”), a Michigan Municipal Authority

This Agreement sets forth the terms and conditions under which Vendor will provide Services to Customer, as the parties may from time to time agree under separately executed Schedules. Depending on what Customer decides to purchase, Vendor and Customer will execute Schedules for the provision of Services. Certain provisions in this Agreement may or may not be applicable depending on whether the parties have executed an appropriate Schedule.

The parties agree as follows:

1. DEFINITIONS.

As used in this Agreement:

“Acceptance” means successful completion of the tasks listed on a Schedule and/or successful completion and delivery to Customer of the deliverables listed on a Schedule, as the case may be.

“Access Device” means all keys, access codes, combinations, access cards, personal identification numbers and similar security codes or identifiers.

“Account” means a continuing relationship established by a person with Customer to obtain a product or service, including an extension of credit and a deposit account.

“Addendum” or “Addenda” for plural means any addendum, supplement, modification, amendment or attachment to this Agreement (other than a Schedule or Statement of Work) which contains such additional or modified terms and conditions as Vendor and Customer may agree upon from time to time.

“Affiliates” means, with respect to Vendor, any other party that directly or indirectly controls, is controlled by or is under common control with Vendor, including any level of parent, any level of affiliate or any level of subsidiary of the Vendor. For purposes of the foregoing definition, “control” (including “controlled by” and “under common control”) means ownership of, or the right to acquire, directly or indirectly: (a) not less than fifty percent (50%) of the voting stock of a corporation; (b) the right to vote not less than fifty percent (50%) of the voting stock of a corporation; or (c) not less than fifty percent (50%) ownership interest in a corporation, partnership, limited liability company or other entity.

“Agreement” means this Master Agreement for Services by and between Vendor and Customer, as may be modified, amended, supplemented or otherwise changed by an Addendum, Change Order, Documentation, Schedule, Statement of Work, exhibit or other written document which Vendor and Customer may duly approve and execute from time to time.

“Business Continuity Plan” means a plan, prepared in accordance with Section 20, to be invoked by Vendor to recover, resume and continue its overall company business operations, and to provide the Systems and/or Services, in the event of a natural or human-induced disaster, or other catastrophic or non-catastrophic adverse circumstances or events, which plan shall include disaster recovery procedures and processes.

“Change” means any amendment, modification or other change to a Schedule or Statement of Work.

“Change Order” means a document executed by both parties, which formalizes all approved Changes.

“Confidential Information” means information that either party may consider to be confidential and/or a trade secret, including, but not limited to, preexisting Proprietary Materials, technical know-how, technical specifications, software code, manners of conducting business and operations, strategic business plans, systems, results of testing, financial information, customer lists and other information about customers, product information, concepts, and compilations of data and any other information given from one party to the other.

“Consumer Price Index” means the “Consumer Price Index for All Items for All Urban Consumers (CPI-U): U.S. City Average (1982-1984=100)” as published monthly by the Bureau of Labor Statistics of the United States Department of Labor. If at any time the Consumer Price Index is no longer issued, then the term “Consumer Price Index” shall mean an index comparable to the Consumer Price Index and published by the Bureau of Labor Statistics of the United States Department of Labor. If the Bureau of Labor Statistics shall no longer maintain statistics on the purchasing power of the consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority mutually agreed upon by Vendor and Customer shall be used in determining the increases in the applicable fixed fees or reimbursements. If the base year “(1982-1984=100)” or other base year used in computing the Consumer Price Index is changed, the figures used in determining the above-described increases in the fixed fees or reimbursements shall be changed accordingly, so that all changes in the Consumer Price Index are taken into account notwithstanding any such change in the base year.

“Covered Account” means an Account that Customer offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account or savings account or any other account that Customer offers or maintains for which there is reasonably foreseeable risk to customers of that account or to the safety and soundness of Customer from Identity Theft.

“Customer Information” means all information about Customer’s customers and employees, whether obtained from Customer or obtained to perform Services under this Agreement, and whether obtained in a test or production setting or otherwise, including, without limitation, names, addresses, telephone numbers, account numbers, social security numbers, customer lists, account relationships, and demographic, financial and transaction information.

“Customizations” means any modifications, adaptations, enhancements or other changes to any System that are created by Vendor specifically for Customer in connection with this Agreement and as set forth on an applicable Schedule. Customizations do not include any Enhancements, Updates, Error corrections or Third Party Materials.

“Day(s)” means calendar days.

“Documentation” means any operator and user manuals, training materials, technical materials, RFP Responses, and other materials provided by Vendor.

“Effective Date” means the date that this Agreement is last executed, unless otherwise specified.

“Enhancement” means a generally released revision to or version of any System that impacts functionality and/or features of the System and is not in the nature of Updates. Vendor shall not be required to provide enhancements for Third Party Materials unless Vendor receives them free of charge and is not legally restricted from providing them to Customer.

“Error” means any failure of any System to conform to the Documentation in any material fashion.

“Facility” means any building or facility to the extent owned, leased, or otherwise controlled by a party where any obligation under this Agreement is to be performed or where a party or its Personnel have access.

“Force Majeure Event” means a circumstance beyond a party’s reasonable control, including, but not limited to, fire or other casualty; acts of God; floods; explosion; earthquake; extraordinary weather conditions not reasonably foreseeable by the party; condemnation; court orders, Laws of government or military authorities; war; riots; civil disorders; acts of terrorism; rebellions or revolutions in any country; but excluding any circumstances attributable to the financial inability of the party to perform or procure performance. A labor dispute, strike, lockout or action of a labor union shall not constitute a Force Majeure Event and shall not relieve Vendor of any of Vendor’s obligations under this Agreement. A particular Force Majeure Event shall not relieve Vendor from its obligations to comply with

its Business Continuity Plan or from its obligations under this Agreement to the extent that the Business Continuity Plan is intended to allow Vendor to continue its business operations notwithstanding the particular Force Majeure Event.

“Identity Theft” means a fraud committed or attempted using the identifying information of another person without authority.

“Identity Theft Prevention Program” means an Identity Theft prevention program that is designed, and includes appropriate steps, to detect, prevent and mitigate Identity Theft in connection with the opening of a Covered Account or any existing Covered Account. This program must include policies and procedures to detect and respond to relevant Red Flags that may arise in Vendor’s performance of its Services.

“Implementation Services” means those services Vendor will perform in connection with implementation of any Systems and/or Services for Customer as described in an applicable Schedule.

“Indemnitee” means Customer and its Personnel and its successors and assigns.

“INITIAL TERM” MEANS _____ YEARS BEGINNING ON THE EFFECTIVE DATE (UNLESS A DIFFERENT BEGINNING DATE IS SPECIFIED).

“Intellectual Property” means all copyrights, patents, trade secrets, trademarks, trademark rights, service marks, trade names, industrial designs, discoveries, inventions (whether patented or not), developments or other intellectual proprietary rights registered or recognized by the Laws of any country or state.

“Laws” means all federal, state and local laws, statutes, rules, codes, directives, regulations and ordinances.

“License” means the transferable, nonexclusive license granted to Customer by Vendor for Customer and its Personnel to access and use a System and Documentation on the terms and conditions set forth in this Agreement and the applicable Schedule. As used in this definition, transferable means Customer’s right to transfer this Agreement in accordance with the terms of this Agreement.

“Losses” means all losses, liabilities, damages, and claims, and all costs and expenses relating to such losses, liabilities, damages, and claims (including, without limitation, costs and/or expenses of investigation, litigation or other dispute resolution proceedings, settlement, judgment and interest and reasonable attorney’s fees and paralegals’ fees [whether or not suit is instituted and, if instituted, at the trial or appellate court levels, in a probate, administrative, bankruptcy or other proceeding, or otherwise]).

“Operations Manager” means an individual designated by Vendor whose primary responsibilities include supporting Vendor’s Project Manager and facilitating relationship effectiveness and problem resolution.

“Personnel” means the officers, directors, employees, agents, contractors and subcontractors (and their respective officers, employees and agents) of any tier of the applicable party.

“Privacy Program” means Vendor’s policies and procedures, in the form of an information security program, to ensure the confidentiality of Customer Information.

“Programs” mean Vendor’s (a) Identity Theft Prevention Program; and (b) Privacy Program.

“Project Manager” means each party’s designated person who will serve as the principal point of accountability for coordinating and managing that party’s obligations under this Agreement.

“Proprietary Materials” means all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, manuals, and business plans), ideas, inventions (whether patentable or not), know-how, processes, compilations of information, patented property, trademarks, service marks, trade secrets and other intellectual property.

“Red Flag” means a pattern, practice or specific activity that indicates the possible existence of Identity Theft.

“RFP” means any Request for Proposal and/or any other material previously issued by Customer for the purpose of soliciting proposals for the subject matter of this Agreement.

“RFP Response” means any materials received by Customer from Vendor in response to a Request for Proposal.

“Schedule” or “Statement of Work” shall interchangeably have the meaning set forth in Section 2.1.

“SDN” means “Specially Designated National” as defined from time to time in regulations issued by the Office of Foreign Asset Control of the United States Department of Treasury available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

“Services” means the services which Customer contracts Vendor to perform in accordance with an applicable Schedule and all Implementation Services, Support Services and Training Services which Customer contracts Vendor to perform under this Agreement.

“Service Levels” means those metrics related to operational performance of a System and/or the Services that Vendor agrees to meet as defined and set forth in an applicable Schedule.

“Subcontractors” means independent third parties or one or more Affiliates engaged, directly or indirectly, by Vendor to provide any Services, or to perform any other obligations to be performed by Vendor under this Agreement. The term Subcontractor includes sub-servicers used by Vendor.

“Support Services” means those services Vendor will perform as described in Section 8 and as may be further set forth in an applicable Schedule.

“System” means any computer equipment, computer software and related equipment and automated business process identified in a Schedule and used by Vendor to provide the Services, including any Customizations thereto (if any), Updates, Enhancements and Error corrections of the System that may be provided under this Agreement.

“Term” means the Initial Term and any renewal terms.

“Termination Assistance Period” means a period of up to six (6) months after the Termination Date during which Vendor provides assistance services in accordance with the terms set forth in this Agreement.

“Termination Date” means the date on which this Agreement is terminated.

“Third Party Confidential Information” means Confidential Information of third parties.

“Third Party Materials” means third party products, tools, software, documents and other materials.

“Training Services” means those services Vendor will perform in connection with training Customer representatives on any Systems and/or Services as described in an applicable Schedule.

“Update” means a generally released revision to or version of any System that includes patches, fixes, minor enhancements, modifications and Error corrections to the System.

“Vendor” has the meaning given that term in the introductory paragraph of this Agreement.

“Vendor Change of Control Event” means a (a) merger of Vendor, or any consolidation, share exchange, combination, reorganization, or like transaction with respect to Vendor (except if immediately following the consummation of such merger, consolidation, share exchange, combination, reorganization or like transaction the shareholders of Vendor before such transaction shall have the power to elect at least a majority of the board of directors or similar governing body of the surviving or successor entity in any such transaction), or (b) sale by Vendor of all or substantially all its assets to a third party.

“Virus” means any harmful, hidden program or data incorporated in a software program or chip that destroys or impairs the program and/or data from processing its normal business operations or destroys or impairs other data and/or programs used by Customer.

2. SCHEDULES/STATEMENTS OF WORK FOR LICENSES AND PURCHASES.

2.1 Schedules/Statements of Work. Vendor shall perform Services as designated in a document or documents executed by Vendor and Customer and referred to as Schedules or Statements of Work to this Agreement, which Vendor and Customer may execute from time to time. Each Schedule shall contain such additional terms and conditions that Vendor and Customer may agree upon. Sample Schedules are attached hereto, but a Schedule may be in any such format as agreed to by the parties. The failure to label, title or refer to a document as a Schedule or Statement of Work shall not prevent that document from being deemed a Schedule or Statement of Work where Systems and/or Services are expressly being provided under it.

2.2 Agreement Documents; Conflicting Terms. This Agreement includes the terms and conditions of this Agreement; all Addenda, Schedules, exhibits and Change Orders entered into by the parties; and all Documentation. The provisions of the various Agreement documents shall, to the extent possible, be interpreted so as supplement each other and avoid any conflict between them. However, in the event of a conflict among the Agreement documents or any purchase orders issued by Customer, the Agreement documents will have the following order of precedence, unless and only to the extent expressly provided to the contrary elsewhere: (a) Sections 7, 9, 11 through 17 and 20 through 24 of this Agreement; (b) Change Orders; (c) Schedules; (d) exhibits, (e) Addenda; (f) the other terms and conditions of this Agreement; (g) purchase orders signed by both parties; and (h) the Documentation. Any statement in Vendor’s purchase order or other like document which purport to modify, override, or otherwise change the priority of documents set forth in this paragraph shall be without legal effect.

2.3 Not Exclusive. This Agreement is not an exclusive arrangement. Customer shall have no minimum purchase, license and/or lease requirements hereunder, and shall be entitled, in its sole discretion, to purchase, license and/or lease systems and/or services from any third party.

3. CHANGE ORDER.

3.1 Changes. All Changes will be made through the change control process described in this Section. The parties agree that: (a) no Change which is reasonably expected to affect the function, performance or delivery schedule of any System and/or Service, or result in an increase in the charges to Customer under a Schedule, will be implemented without Customer’s prior written approval; and (b) all approved Changes will be formalized by a Change Order executed by both parties.

3.2 Requests for Change. All requests for Changes will be communicated in writing by the requesting party’s Project Manager to the other party’s Project Manager. Requests for Changes will include the following information: (a) a detailed description of the Change requested; (b) the business, technical, and financial justification for the Change; (c) if known at the time the Change request is made, the price and capital costs (if separate) associated with the Change; (d) if known at the time the Change request is made, the projected schedule for the Change; (e) the priority of the Change; and (f) if known at the time the Change request is made, the change in ongoing or future pricing or fees, if any, resulting from such Change.

3.3 Change Process. Within seven (7) days (or such longer period as is mutually agreed in writing) after receiving a request from Customer for a Change or requesting a Change from Customer in accordance with Section 3.2, Vendor will prepare and provide to Customer a document summarizing the effect, if any, of the proposed Change on: (a) the scope of the Services, Systems, Schedules or Service Levels; (b) Customer’s obligations; and (c) the budget or price for the Change. In addition, Vendor will inform Customer in such document regarding any other business impact Vendor believes to be relevant to Customer’s evaluation of the Change Order. Within fourteen (14) days after receiving such information, Customer will approve, reject, or (in the case of Change requests initiated by Customer) withdraw the request for the Change. Customer’s failure to approve, reject or withdraw the request in writing within the applicable time period will be deemed a withdrawal or rejection of the request.

4. PROJECT AND OPERATIONS MANAGERS; RESPONSIBLE CUSTOMER EMPLOYEE.

4.1 **Project Managers.** Each party will designate an individual to serve as its Project Manager under this Agreement. Each party's Project Manager will serve as the principal point of accountability for coordinating and managing that party's obligations. By way of example and not by way of limitation, Vendor's Project Manager must have the ability and expertise to coordinate activities on behalf of Vendor, resolve identified issues, and support the Customer account generally. The parties' initial Project Managers are identified below. Either party may assign a replacement individual to serve as a Project Manager from time to time, provided that the party assigning a replacement gives thirty (30) days' advance written notice (or as much advance written notice as is possible under the circumstances, if less than thirty (30) days) of the replacement individual.

Vendor's Project Manager: _____

Customer's Project Manager: _____

4.2 **Operations Manager.** With Customer's concurrence, Vendor will designate one or more individuals to serve as its local Operations Manager under this Agreement. The Operations Manager's primary responsibilities will be to support Vendor's Project Manager and facilitate Customer relationship effectiveness and problem resolution. Issues that cannot be resolved by the Operations Manager may be escalated by either party to the Project Managers. Vendor's initial Operations Manager(s) is identified below. Vendor may assign a replacement individual to serve as Operations Manager from time to time, provided that Vendor gives thirty (30) days' advance written notice (or as much advance written notice as is possible under the circumstances, if less than thirty (30) days) of the replacement individual and obtains Customer's consent to the replacement, such consent not to be unreasonably withheld, conditioned or delayed.

Vendor's Operations Manager(s): _____

4.3 **Responsible Customer Employee.** The Customer employee ultimately responsible for accepting Vendor's performance under this Agreement is listed below.

Chief Information Officer
Great Lakes Water Authority
735 Randolph Street, 1708
Detroit, Michigan 48226
Telephone: (313) 964-9917
Email: CIO@glwater.org

5. SYSTEM LICENSE.

5.1 **Check appropriate box below:**

Managed Services Grant.

- (a) Vendor grants to Customer the License to access and use each System and Documentation solely on the terms and conditions set forth in this Agreement and the applicable Schedule.
- (b) Vendor will host and maintain each System on a shared server(s) with dedicated domains for Customer and in accordance with the terms of the applicable Schedule, including Service Levels. Customer's Confidential Information will not be commingled with any third party's data or information on such server(s). Vendor shall maintain and enforce safety and security procedures in operating each System that are at least: (i) equal to industry standards for such networks; (ii) as rigorous as those procedures which are in effect for other similar networks then owned or controlled by Vendor; and (iii) compliant with any reasonable safety and security requirements requested by Customer. At a minimum, Vendor will comply with the requirements set forth in the applicable Schedule.

- (c) Upon Customer's request, Vendor shall maintain and provide Customer with access to one or more non-production environments of each System. Such environments may be used by Customer for testing and/or training purposes, including, but not limited to for use during the testing of Customer's disaster recovery system.

Software as a Service (SAAS) Services Grant.

- (a) Vendor grants to Customer the License to access and use each System and Documentation solely on the terms and conditions set forth in this Agreement and the applicable Schedule.
- (b) Vendor will host and maintain each System on a shared server(s) for Customer and in accordance with the terms of the applicable Schedule, including Service Levels. Vendor shall maintain and enforce safety and security procedures in operating each System that are at least: (i) equal to industry standards for such networks; (ii) as rigorous as those procedures which are in effect for other similar networks then owned or controlled by Vendor; and (iii) compliant with any reasonable safety and security requirements requested by Customer. At a minimum, Vendor will comply with the requirements set forth in the applicable Schedule.
- (c) Upon Customer's request, Vendor shall maintain and provide Customer with access to one or more non-production environments of each System. Such environments may be used by Customer for testing and/or training purposes, including, but not limited to for use during the testing of Customer's disaster recovery system.

On Premise License Grant.

- (a) Vendor grants to Customer the License to install, execute and use the System and Documentation on Customer's servers, solely on the terms and conditions set forth in this Agreement and the applicable Schedule.

5.2 Scope of Rights. Customer may:

- (a) Access and use each System by an unlimited number of concurrent users, and such users may be Customer's employees, customers and/or contractors, provided Customer shall remain responsible for any violation of this Agreement by any such employees, customers and/or contractors.
- (b) Make copies of each System's Documentation for Customer's use in accordance with this Agreement, provided that Vendor's copyright and other proprietary legends are reproduced on each copy.

5.3 Restrictions. In addition to other restrictions set forth in this Agreement, Customer may not:

- (a) Reverse assemble or decompile any System or otherwise examine a System for purposes of reverse engineering; or
- (b) Remove the labels or any proprietary legends from any System or its Documentation.

5.4 Title. Vendor reserves all rights in each System not expressly granted. Customer understands that the license granted herein transfers neither title nor proprietary rights to Customer with respect to any System.

5.5 Customer's Processes. In installing, configuring, integrating or establishing interfaces to the System for Customer, Vendor must comply with all of Customer's applicable IT processes and practices.

6. CUSTOMIZATIONS.

6.1 Customizations Acquired by Customer. In consideration for the fees set forth on an applicable Schedule, Vendor shall provide Customer with Customizations in both object and source code formats, as applicable.

6.2 Title. All rights, title and interest in and to the Customizations shall vest exclusively in Customer. To the extent that Vendor is creating or developing all or any of the Customizations, all rights, including all Intellectual Property rights, in all Proprietary Materials relating to the Customizations will belong to Customer. Vendor agrees that all Customizations and Proprietary Materials created in connection with this Agreement are "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Vendor owns any Intellectual Property rights in such Customizations and/or Proprietary Materials, Vendor hereby irrevocably

assigns and transfers to Customer all rights, title and interest in such Customizations and/or Proprietary Materials. To the extent that, by operation of Law, any Vendor Personnel owns any Intellectual Property rights in such Customizations and/or Proprietary Materials, Vendor shall obtain all such rights and, immediately upon obtaining them, hereby irrevocably assigns and transfers to Customer all rights, title and interest in such Customizations and/or Proprietary Materials.

6.3 Vendor Disclosure and Cooperation. Vendor agrees to disclose promptly to Customer all Customizations and Proprietary Materials developed by Vendor under this Agreement. Vendor agrees to cooperate with Customer in the protection of Customizations and Proprietary Materials and the securing of Customer's rights in the Customizations and Proprietary Materials, including the execution of any documents necessary to secure such rights, whether during or after the term of this business relationship with Customer.

7. PROPRIETARY MATERIALS AND OWNERSHIP.

7.1 Preexisting Vendor Proprietary Materials. Vendor will have and retain all rights, including Intellectual Property rights in Vendor's pre-existing Proprietary Materials. Customer acknowledges that it does not own Vendor's pre-existing Proprietary Materials and will acquire no right, title or interest in Vendor's pre-existing Proprietary Materials, except for such rights pursuant to a license, purchase or lease as may be expressly granted to Customer under this Agreement.

7.2 Preexisting Customer Proprietary Materials. Customer will have and retain all rights, including Intellectual Property rights, in Customer's Proprietary Materials. Vendor acknowledges that it does not own Customer's Proprietary Materials and will acquire no right, title, or interest in Customer's Proprietary Materials furnished to or used by Vendor.

7.3 Third Party Materials. In providing the Systems and/or Services, Vendor may use Third Party Materials. Vendor represents and warrants that it has all rights needed to use the Third Party Materials to provide the Systems and/or Services under this Agreement and that Customer may use the Third Party Materials as contemplated under this Agreement. Customer acknowledges that it does not own the Third Party Materials and will acquire no right, title or interest in such Third Party Materials, except for such rights pursuant to a license, purchase or lease as may be granted to Customer under this Agreement. Vendor shall disclose in writing to Customer whether any Third Party Materials will be incorporated or embedded into any of the Proprietary Materials and obtain Customer's prior written consent to the same. In the event that any Third Party Materials will be incorporated or embedded into any of the Proprietary Materials, Vendor represents and warrants that Customer (and all third parties that Customer may allow to use such Proprietary Materials) will have a perpetual, worldwide, royalty-free license to use such Third Party Materials as part of such Proprietary Materials.

7.4 Title. All rights, including without limit all Intellectual Property rights, in all Proprietary Materials created by Vendor under this Agreement will belong to Customer. Vendor agrees that all Proprietary Materials created in connection with this Agreement are "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of Law, Vendor owns any Intellectual Property rights in such Proprietary Materials, Vendor hereby irrevocably assigns and transfers to Customer all rights, title and interest in such Proprietary Materials. To the extent that, by operation of Law, any Vendor Personnel owns any Intellectual Property rights in such Proprietary Materials, Vendor shall obtain all such rights and, immediately upon obtaining them, hereby irrevocably assigns and transfers to Customer all rights, title and interest in such Proprietary Materials.

7.5 Vendor Disclosure and Cooperation. Vendor agrees to disclose promptly to Customer all Proprietary Materials developed by Vendor under this Agreement. Vendor agrees to cooperate with Customer in the protection of Proprietary Materials and the securing of Customer's rights in the Proprietary Materials, including the execution of any documents necessary to secure such rights, whether during or after the term of this business relationship with Customer.

8. SUPPORT SERVICES.

8.1 General. Vendor shall provide Support Services set forth in this Section and as agreed upon by the parties in an applicable Schedule.

8.2 Telephone and Internet Support. Vendor shall provide Customer with a telephone support hotline and Internet support for each System from 6 a.m. to 8 p.m. Eastern Standard Time, Monday through Saturday, excluding nationally observed government holidays. Vendor agrees to provide a phone number, pager number, email address

and any other mutually acceptable contact mechanism that may be utilized at any time outside of the above stated hours to contact a Vendor representative for assistance and support. In the event that any System is unavailable to Customer, Vendor shall provide Support Service outside of the above stated hours in order to restore System availability.

8.3 **Updates; Enhancements.** Vendor shall provide Customer with Updates and Enhancements to each System free of charge.

8.4 **Error Correction.** Customer shall notify Vendor promptly of any Error. Vendor shall use commercially reasonable efforts to expeditiously provide modifications, bug fixes, and other changes to the applicable System to correct Errors and shall comply with such additional obligations, if any, as may be more fully set forth in an applicable Schedule. To the extent that any Third Party Materials are incorporated into a System, or works in conjunction with a System, Vendor shall be responsible for any performance related Errors under the terms of this Agreement.

8.5 **Third Party Materials.** Vendor may provide Support Services for the Third Party Materials as set forth in an applicable Schedule.

9. SERVICES AND OTHER RESPONSIBILITIES.

9.1 **Services.** Vendor shall provide Services as set forth in an applicable Schedule or as otherwise set forth in this Agreement.

9.2 **Customer Responsibilities.** Customer will provide Vendor with access during Customer's support hours as identified in Section 8.2 to Customer's appropriate Personnel and Facilities as reasonably necessary for Vendor to provide the Services.

9.3 **Conflict of Interest.** Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services under this Agreement. Vendor further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by it. Vendor further covenants that no officer, agent, or employee of Customer and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or performance of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or in its proceeds, whether such interest arises by way of a corporate entity, partnership, or otherwise. Vendor warrants (a) that it has not employed and will not employ any person to solicit or secure this Agreement upon any agreement or arrangement for payment of a commission, percentage, brokerage fee, or contingent fee, other than bona fide employees working solely for Vendor either directly or indirectly, and (b) that if this warranty is breached, Customer may, at its option, terminate this Agreement without penalty, liability or obligation, or may, at its option, deduct from any amounts owed to Vendor under this Agreement any portion of any such commission, percentage, brokerage, or contingent fee.

9.4 **Use of Subcontractors.** Vendor, at its expense and after having obtained Customer's prior written consent, may employ Subcontractors to provide all or part of the Services, provided that Vendor remains fully and unconditionally responsible for all Services and for the Subcontractors' compliance with this Agreement including any Schedules and/or Addenda. At the time Vendor requests Customer's approval of a Subcontractor, Vendor must submit for Customer's review and written approval copies of all contracts and insurance policies that Vendor has or proposes to have with that Subcontractor that would be engaged for the Services associated with this Agreement.

9.5 **Approval of On-Site Personnel.** Vendor agrees that Customer will have the right of initial and continuing approval of Vendor's Personnel, if any, who are rendering performance under this Agreement at Customer's Facilities and/or who have access to Customer's Confidential Information or Customer Information.

9.6 **Compliance with Laws and Customer Procedures.** Vendor will comply with all applicable Laws, including without limitation Laws pertaining to equal employment opportunity, fair employment practices, immigration and data protection, and will maintain all permits, certificates, approvals and licenses required to provide the Systems and/or Services. Vendor and its Personnel, while at a Customer Facility, may be required to and shall comply with policies and procedures of Customer, including dress, conduct code, record retention and security procedures, including Customer's then-current stated IT policies. Customer will notify Vendor in writing of such policies and procedures. Vendor will not knowingly permit any Vendor Personnel to have access to a Customer Facility or any confidential or proprietary records or data of Customer if the person has been convicted of a crime in connection with (a) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense; or (b) a felony. Vendor must, to the extent permitted by Law: (i) conduct a check of public records in all Vendor Personnel's states of residence and employment

for at least the last five (5) years in order to verify the above; and (ii) perform, or cause to be performed, fingerprint checks on all Vendor Personnel having access to a Customer Facility or any Confidential Information of Customer. Vendor shall make certain that all contracts with Subcontractors under this Agreement impose the obligations of this Section on the Subcontractors and shall monitor the Subcontractors' compliance with such obligations.

9.7 **Safekeeping and Security.** Vendor will be responsible for safekeeping all Access Devices issued to Vendor's Personnel. This obligation will include, but not be limited to, development and implementation of written procedures and processes for such safekeeping and security measures, the maintenance of inventories and logs for all Access Devices, and return of all Access Devices when persons cease performing Services under this Agreement. Vendor will make its written safekeeping and security procedures and processes available to Customer at or prior to the Effective Date of this Agreement and thereafter from time to time, at Customer's reasonable request. Customer will have the right to review and audit Vendor's safekeeping and security procedures, processes and activities. Vendor will be responsible for any Losses Customer incurs in connection with a lost or stolen Access Device or other breaches of this Section. Vendor is responsible for the replacement cost of a lost Access Device.

9.8 **Return of Customer Property.** Vendor agrees to ensure that whether at the termination of this Agreement or at the termination of any of Vendor's Personnel from performing services under this Agreement, all property of Customer will be returned to Customer including, but not limited to, any Confidential Information, Third Party Confidential Information and/or Customer Information, and all Access Devices.

9.9 **Reports.** Vendor will provide Customer with (a) the reports as agreed to between the parties; and (b) such other documentation and information as Customer reasonably requests, to verify Vendor's performance of its obligations under this Agreement, including that the Systems have been supplied and the Services are being performed in compliance with the Service Levels. Upon request, Vendor will provide Customer and its designees with the information and procedures used by Vendor to perform such monitoring and produce such reports and information, for purposes of performing an audit of Vendor's compliance with the Service Levels and these reporting requirements

9.10 **Investigation and Correction.** If Vendor fails to meet any Service Level or fails to comply with any warranty or other contractual obligation under this Agreement, Vendor will (a) immediately investigate and perform a root-cause analysis to identify the cause of the failure; (b) correct the problem in a commercially reasonable time period, take appropriate preventive measures to reduce the probability of a recurrence of the problem, and take appropriate actions to mitigate the adverse effects of the problem prior to its correction; (c) promptly provide to Customer a report on the causes of the problem; and (d) periodically advise Customer of the status of remedial efforts being undertaken with respect to the problem. The obligations set forth in this Section are in addition to any Service Level credits in favor of Customer and any other obligations Vendor may have under this Agreement, and shall not limit or modify in any way Customer's rights or remedies under this Agreement due to such failure or default by Vendor. Nothing in this Section shall extend or otherwise modify any time period that may be specified in this Agreement with respect to Vendor curing any breach or default.

10. FEES AND PAYMENT TERMS.

10.1 **Fees.** Except as otherwise expressly provided in this Agreement, Customer agrees to pay Vendor the fees set forth in an applicable Schedule for all the Systems and Services provided under this Agreement at the rates provided therein. Such fees shall be due and payable in accordance with the terms and conditions set forth in an applicable Schedule. Vendor agrees that during the Term of this Agreement, the fees shall not increase over the immediately preceding year's fees by more than the lesser of: (a) the increase in the Consumer Price Index during the immediately preceding twelve (12) month period; or (b) two percent (2%). This shall not be deemed to give Vendor the right to increase annual fees, unless specifically authorized by this Agreement and then only to the extent that they are otherwise fixed for a specific time period.

10.2 **Reimbursable Expenses.** Customer will reimburse Vendor for pre-approved actual, reasonable expenses incurred by Vendor in the performance of the Services, such as travel costs and document reproduction costs, which are identified in an applicable Schedule as reimbursable.

10.3 **Invoices.** Customer's invoicing procedures are set forth below and may be modified by Customer from time to time upon at least thirty (30) days prior written notice to Vendor:

- (a) Invoicing generally.
 - (i) No "supplemental" invoices or other invoices with charges additional to charges already shown on a previous invoice for the same Services will be accepted or paid by Customer.

- (ii) All hourly rates will be calculated in increments not to exceed fifteen (15) minutes, with no minimums.
 - (iii) No payment by Customer of an invoice, and no failure by Customer to send a notice that an invoice is inaccurate, will waive Customer's right to dispute all or any portion of the invoice at a later time.
- (b) Delivery of invoices.
- (i) Invoices shall not be sent for Services until the Services are actually rendered. All invoices from Vendor must be received within thirty (30) days after the close of the immediately preceding calendar month. In the event that Vendor cannot comply with the thirty (30) day requirement, the parties may agree to extend the time for invoicing by mutual written agreement, but in no case shall Customer will pay for fees or expenses not billed within one hundred twenty (120) days from the date incurred.
 - (ii) Vendor agrees to provide Customer a single consolidated monthly invoice for all Services rendered under this Agreement. In addition, Vendor agrees to provide Customer with invoice detail that lists individual Vendor fees with sub-totals by Customer Billing Cost Center. Customer will not pay a premium for hours billed on weekends or holidays.
 - (iii) Vendor invoices shall be submitted by E-mail to: accountspayable@glwater.org
- (c) Payment of invoices; accuracy of invoices; regeneration of inaccurate invoices.
- (i) Customer will pay only invoices that are fully accurate in all respects. This paragraph details the process for payment of an accurate invoice and for Vendor's regeneration of inaccurate invoices.
 - (A) Customer will send payment to Vendor in U.S. funds for the amount due on a fully accurate invoice within forty-five (45) days after Customer's receipt of the invoice.
 - (B) If Customer reasonably determines that an invoice is not fully accurate in all respects, Customer will, within forty-five (45) days of receipt of the invoice, send notice of the inaccuracy to Vendor in writing. Vendor then will have ten (10) days from receipt of that notice to regenerate and deliver to Customer a corrected invoice.
 - (C) If Customer reasonably determines that the regenerated invoice is fully accurate in all respects, Customer will pay that invoice in full within forty-five (45) days after receipt of the accurate regenerated invoice.
 - (D) If Customer reasonably determines that the regenerated invoice still is not fully accurate in all respects, Customer will pay, within forty-five (45) days of the receipt of the regenerated invoice, the amount of the regenerated invoice that Customer determines is accurate, and the balance of the invoice will be deemed waived by Vendor.
 - (ii) All regenerated invoices will refer to and use the original invoice number.

10.4 **Disputed Charges.** If Customer disputes any fee, charge, or billing by Vendor, Vendor and Customer will use reasonable efforts to resolve the disputed amounts as promptly as practicable. During the dispute resolution process, non-payment of a disputed charge will not be grounds for termination of this Agreement, for reporting Customer delinquent to any person or entity and will not excuse Vendor's obligations to provide the Systems and/or Services to Customer called for by this Agreement.

10.5 **Taxes.** Customer is exempt from paying taxes that might otherwise be applicable to the System and Services. Vendor acknowledges and agrees that its employees and contractors may be subject to additional income taxes, such as the City of Detroit Income Tax, when performing Services at Customer's Facilities.

10.6 **Customer Satisfaction Survey.** During the first year of this Agreement, at Customer's request, Customer and Vendor shall jointly develop a Customer Satisfaction Survey to assess Vendor's performance under this Agreement.

11. INSURANCE.

11.1 **Insurance Requirements.** During the term of this Contract, the Contractor shall maintain the following insurance, at a minimum and at its expense:

TYPE	AMOUNT NOT LESS THAN
(a) Workers' Compensation	Statutory limits
(b) Employers' Liability	\$500,000 each disease \$500,000 each person \$500,000 each accident
(c) Commercial General Liability (Broad Form Comprehensive)	\$1,000,000 each occurrence \$1,000,000 personal/advertising injury \$2,000,000 general aggregate \$2,000,000 products/completed operations aggregate
(d) Automobile Liability (covering all owned, hired and non-owned vehicles with personal injury and property protection insurance, including residual liability insurance under Michigan no fault insurance law)	\$1,000,000 combined single limit
(e) Professional Liability (Errors & Omissions)	\$3,000,000 each claim \$3,000,000 aggregate
(f) Umbrella/Excess Liability	\$4,000,000 each occurrence \$4,000,000 aggregate
(g) Crime Liability (covering property including money and securities)	\$5,000,000 each occurrence \$5,000,000 general aggregate
(h) Cyber Liability/Network Privacy (including 3 rd party coverage)	\$5,000,000 each occurrence \$5,000,000 general aggregate

11.2 The commercial general liability policy shall include an endorsement naming the "Great Lakes Water Authority" as an additional insured. The additional insured endorsement shall provide coverage to the additional insured with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Agreement.

11.3 The commercial general liability and the umbrella/excess liability policies shall provide/be endorsed to provide that Vendor's insurance is primary and non-contributory to any insurance already carried by the GLWA.

11.4 The workers' compensation, commercial general liability and automobile liability policies shall be endorsed with a waiver of subrogation on either a blanket basis or in favor of the GLWA.

11.5 All insurance required by this Agreement shall:

- (a) Name the Vendor as the insured;
- (b) Be written on an occurrence-based policy form, if the same is commercially available; and
- (c) Be effected at Vendor's expense, under valid and enforceable policies, issued by insurers either licensed to conduct business in Michigan or which have a current A.M. Best's rating of no less than A-/VIII, and which are otherwise acceptable to Customer.

11.6 If during the term of this Agreement changed conditions or other pertinent factors should, in the reasonable judgment of Customer, render inadequate the insurance limits, Vendor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances.

11.7 Certificates of insurance evidencing the coverage required by this Section shall, in a form acceptable to Customer (ACORD 25 form preferred), be submitted to Customer prior to the commencement of the Services and at least fifteen (15) days prior to the expiration dates of expiring policies.

11.8 Vendor shall provide to Customer thirty (30) days' written notice of cancellation of any policy required by this Agreement and ten (10) days' written notice of cancellation due to non-payment of premium.

11.9 If any work is subcontracted in connection with this Agreement, Vendor shall require each Subcontractor to effect and maintain the types and limits of insurance set forth in this section and shall require documentation of same, copies of which documentation shall be promptly furnished to Customer.

11.10 Vendor shall be responsible for payment of all deductibles contained in any insurance required under this Agreement. The provisions requiring Vendor to carry the insurance required under this Section shall not be construed in any manner as waiving or restricting the liability of Vendor under this Agreement.

11.11 Failure to comply with any term or condition of this Section 11 constitutes a material breach of this Agreement.

12. WARRANTIES.

12.1 **Additional Warranties.** The warranties set forth below are in addition to any warranties set forth in an applicable Schedule or elsewhere in this Agreement:

12.2 **Duly Authorized.** Each party warrants that: (a) it is a corporation or other entity duly incorporated or organized, validly existing, and in good standing under the Laws of the state of incorporation or organization; (b) it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement has been duly authorized by such party; and (d) except for any legislative bodies governing Customer, no approval, authorization or consent of any court or any government or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement.

12.3 **System Performance.** Vendor warrants that each System and System component will operate in substantial conformance with its Documentation during the term of this Agreement. Vendor agrees to correct any Error of which it receives notice. Customer shall provide Vendor with written notice that an Error exists, and Vendor shall have a reasonable period of time, based on the severity of the Error, at Vendor's sole cost and expense, to correct the applicable System.

12.4 **System Use/No Viruses.** Vendor warrants that the Systems and/or Services requiring programming or software products do not contain any disabling devices that would allow Vendor to terminate operation of the Systems and/or Services and/or any software. Vendor further warrants that any such software will be free from any Virus at the time of use and has undergone a commercially reasonable quality assurance procedure to ensure that there are no Viruses and contain no embedded devices or codes (e.g. time bombs) that will obstruct or prevent use of the Systems and/or Services. Vendor, at its sole cost and expense, agrees to use its best efforts to assist Customer in curtailing the spread of any Virus found or reasonably believed to have come from such software, and to correct or replace any impaired or destroyed software which resulted due to a Virus.

12.5 **Ownership.** Vendor further warrants that the Systems and Services and the Proprietary Materials provided to Customer or used by Vendor to provide the Systems and/or Services, under this Agreement are either Vendor's original work, are public domain materials or are owned by a third party from whom Vendor has acquired all necessary permissions to grant the rights under this Agreement. Furthermore, Vendor warrants that neither its provision of the Systems or Services or its provision or use of the Proprietary Materials nor Customer's receiving or use of the same as provided under this Agreement infringe the Intellectual Property rights (including copyrights, patents, trade secrets, trademarks and know-how) of any third party. Vendor may, in its sole discretion, but without limiting Customer's rights or remedies under this Agreement: (a) procure for Customer the right to continue using the infringing System, Service or component; or (b) provide a substitute, non-infringing System, Service or component (meeting all requirements and specifications of the infringing System, Service or component) at no cost to Customer.

12.6 **Additional Applications.** Vendor warrants that it shall not deliver or install any additional software applications or tools that Customer has not agreed to obtain in any applicable Schedule and that in any event, Customer shall not be charged for any such additional software, applications or tools.

12.7 **Services.** Vendor warrants that it has reviewed the specifications and requirements of the Services and it has the expertise and resources necessary to undertake and complete the Services in accordance therewith in the applicable timeframe, if any, specified in a Schedule. Vendor warrants that (a) the Services will be performed in a diligent and workmanlike manner, in accordance with Vendor's customary business practices, which will at all times be equal to or better than standard industry practices, by individuals of suitable training and skill; and (b) in providing the Services, Vendor and Vendor Personnel will comply with all Laws that apply to, and obtain all permits, approvals and licenses that pertain to, the provision of the Services. In the event of a breach of this warranty, without limiting Customer's

other rights and remedies, Vendor will re-perform the defective Services at no charge to Customer within the time limits applicable to the Service under the applicable Schedule and the applicable Service Levels.

12.8 **Service Levels.** Vendor warrants that its performance under this Agreement will meet or exceed the Service Levels as set forth in an applicable Schedule to this Agreement.

12.9 **Disclaimer.** UNLESS OTHERWISE STATED IN A SCHEDULE OR ELSEWHERE IN THIS AGREEMENT, VENDOR DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12.10 **No Limit on Remedy.** Nothing in this Section is intended or shall be deemed to limit Customer's other rights or remedies.

13. CONFIDENTIAL INFORMATION.

13.1 **General.** During the Term of this Agreement, Vendor and Customer may have access to the other's Confidential Information.

13.2 **Non-Disclosure.** Each party will use the other's Confidential Information only to perform its obligations under, or for purposes related to, this Agreement. Neither party will use the other's Confidential Information for the benefit of a third party. Each party: (a) will maintain the confidentiality of the other's Confidential Information in the same manner in which it protects its own information of like kind, but in no event will either party take less than reasonable precautions to prevent the unauthorized use of, access to, or disclosure of the Confidential Information; (b) is authorized to disclose or allow access to the other's Confidential Information only to its employees, agents, contractors, consultants, auditors and authorized Subcontractors on a need to know basis, provided that all such agents, contractors, consultants, auditors and Subcontractors have written confidentiality obligations to that party at least as restrictive as those in this Agreement; and (c) is responsible for, and will indemnify and hold the other party harmless against, any Losses arising from any misplacement, loss, or unauthorized disclosure or use of, or access to, the other party's Confidential Information. Neither party shall export, disseminate or otherwise transfer, in writing, orally and/or electronically, the other party's Confidential Information outside of the United States. In the event a party is responsible for the loss, disclosure or use of, or access to, the other party's Confidential Information, or suspects that a loss, or unauthorized disclosure or use of, or unauthorized access to, the other party's Confidential Information has occurred, the responsible party shall: (i) immediately (but in any case not later than twenty-four (24) hours after becoming aware of such occurrence) notify the other party of the same both orally and in writing; and (ii) take measures to determine the scope of the loss or breach and restore or enhance the security of the Confidential Information to avoid further losses or breaches.

13.3 **Third Party Confidential Information.** Vendor may have had or may have access to Third Party Confidential Information during third party projects or other business relationships or during the provision of Systems or Services. Vendor shall keep all Third Party Confidential Information confidential and not disclose or allow access to it, except as may be expressly authorized by that third party. Vendor will not disclose any Third Party Confidential Information to Customer, or incorporate or co-mingle any Third Party Confidential Information into Vendor's provision of all, or part, of the Systems or Services, without the express written authorization of that third party. Vendor shall indemnify, defend, and hold Customer harmless against any claim or action brought by any third party or other Losses for an actual or alleged violation of this Section.

13.4 **Exceptions.** The confidentiality provisions of this Agreement do not apply to information that is entirely in the public domain; was known to the party prior to access to the information through no breach of any obligation of confidentiality; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the other party; is created by that party's employees independently of the other party's Confidential Information; or is required to be disclosed to a party's regulatory agencies or auditors or pursuant to court order or applicable Law.

14. PRIVACY AND IDENTITY THEFT PREVENTION.

14.1 **Applicable Law.** Both Customer and Vendor have duties under applicable state and federal Law to maintain the confidentiality of Customer's customer records. To assure the protection of customer records or information shared by Customer with, or accessed by, Vendor or its Personnel during the existence of this Agreement and indefinitely thereafter, the parties agree to comply with the provisions of this Section.

14.2 **Customer Information.** All Customer Information is confidential. Vendor shall not use the Customer Information or add the Customer Information to its own records unless required to perform under this Agreement. Further, Vendor shall not disclose any of the Customer Information to, or allow access to or use of any of the Customer Information by, its shareholders, directors, officers and employees other than for the sole purpose of the performance of Vendor's obligations under this Agreement. Vendor shall not export, disseminate or otherwise transfer in writing, orally and/or electronically, Customer Information outside of the United States.

14.3 **Nondisclosure.** Vendor shall not disclose Customer Information to, or allow access to or use of any of the Customer Information by, any third party without Customer's prior written consent. Unless otherwise prohibited by Law, Vendor shall: (a) immediately notify Customer of its receipt of any legal process for Customer Information; and (b) permit Customer adequate time to seek to prohibit or limit such disclosure.

14.4 **Vendor's Programs.** Vendor shall maintain and comply with a Privacy Program acceptable to Customer. Vendor's Privacy Program shall be designed to (a) ensure the security and confidentiality of the Customer Information; (b) protect against any anticipated threats or hazards to the security or integrity of such Customer Information; and (c) protect against unauthorized access to or use of such Customer Information that could result in substantial harm or inconvenience to any customer. The Privacy Program shall include, among others, a provision for disposal of Customer Information acceptable to Customer, whether such disposal is completed during the Term of this Agreement or upon its termination. The Privacy Program shall be made available to Customer for review promptly following Customer's request and any changes to the Privacy Program shall be submitted to Customer for review prior to implementation. If (but only if) Vendor's Services include an activity in connection with a Covered Account, Vendor shall maintain and comply with an Identity Theft Prevention Program acceptable to Customer. The Identity Theft Prevention Program shall be made available to Customer for review promptly following Customer's request and any changes to the Identity Theft Prevention Program shall be submitted to Customer for review prior to implementation. If (but only if) Vendor's Services include an activity in connection with a Covered Account, Vendor shall conduct a risk assessment to determine which Red Flags are relevant to the Services it performs for Customer and shall include the results in the Identity Theft Prevention Program. This assessment shall include: (i) the methods that Vendor provides to open Accounts for Customer customers; (ii) the methods Vendor uses to access Accounts of Customer customers; and (iii) Vendor's prior experiences with Identity Theft.

14.5 **Subcontractors.** In the event Vendor is permitted to use one or more Subcontractors to fulfill its obligations under this Agreement, Vendor shall: (a) share the Customer Information with any Subcontractor(s) only after Customer's written approval; (b) share only that Customer Information necessary for the Subcontractor(s) to fulfill its duties under this Agreement; (c) require its Subcontractor(s) by contract to maintain the Customer Information in a manner consistent with the laws of the United States and, where not less protective of the security of the Customer Information, the laws of the Subcontractor's country (although this shall not be deemed to permit export, dissemination or other transfer of the Customer Information outside of the United States); (d) require such Subcontractor(s) to maintain adequate policies, procedures and controls to ensure that such Subcontractor(s) will protect the Customer Information in the same manner Vendor is required to maintain the Customer Information hereunder and to maintain an Identity Theft Prevention Program consistent with that required to be maintained by Vendor and acceptable to Customer; (e) require such Subcontractor(s) to immediately (but in any case not later than twenty-four (24) hours after becoming aware of such occurrence) notify Vendor both orally and in writing in the event of (i) a breach or suspected breach in the security, or loss or suspected loss, of the Customer Information; or (ii) an actual Identity Theft and/or a Red Flag; and (f) monitor its Subcontractor(s) to assure Subcontractor's compliance with the policies, procedures and controls required by this Agreement. Vendor shall be liable to Customer for a Subcontractor's failure to maintain Customer Information to the same extent that Vendor is liable for its own actions under this Agreement.

14.6 **Security Breach.** In the event of a loss, or a suspected loss, or breach or suspected breach in the security, of the Customer Information, Vendor shall: (a) immediately (but in any case not later than twenty-four (24) hours after becoming aware of such occurrence) notify Customer of the loss or breach, or suspected loss or breach, both orally and in writing; and (b) take measures to determine the scope of the loss or breach and restore or enhance the security of the Customer Information to avoid further breaches. In the event of an actual Identity Theft or Red Flag, Vendor shall immediately (but in any case not later than twenty-four (24) hours after becoming aware of such occurrence) notify Customer of such actual Identity Theft or Red Flag and shall follow the procedures set forth in the Identity Theft Prevention Program for such a situation.

14.7 **Audit.** Vendor shall permit Customer to audit Vendor's compliance with these confidentiality provisions and these Identity Theft provisions at any time during Vendor's regular business hours. Vendor shall also permit Customer at any time during Vendor's regular business hours to review the results of Vendor's audits of those

Subcontractors approved by Customer to have access to or maintain the Customer Information or who are required to maintain an Identity Theft Prevention Program.

14.8 **Obligations after Termination.** Within thirty (30) days after this Agreement terminates, Vendor shall, at Customer's election, either (a) return the Customer Information; or (b) destroy the Customer Information in accordance with Vendor's Program, and provide written certification signed by a senior officer of Vendor that such Customer Information has been destroyed.

14.9 **Equitable Relief.** Since unauthorized disclosure of the Customer Information may cause immediate irreparable harm to Customer for which monetary damages may be inadequate, Customer shall be entitled to equitable relief, including without limitation, a temporary and permanent injunction and specific performance if Vendor threatens or actually breaches its duty of confidentiality.

14.10 **Indemnification.** Vendor will, at its expense, indemnify, defend and hold Indemnitees harmless from all claims, demands, suits, proceedings or other Losses in connection with or arising from Vendor's failure to comply with the terms of this Section, including without limit any costs and expenses of notification to Customer's customers which Customer determines in its sole discretion is required of Customer by Law or to protect Customer's reputation.

14.11 **Conflicting Provisions.** The privacy provisions contained in this Section shall supersede any conflicting confidentiality provisions in this Agreement or any other agreement between Customer and Vendor and shall be in addition to any non-conflicting confidentiality provisions in those agreements. Future agreements between Customer and Vendor shall not modify or supersede any or all of the privacy provisions contained in this Section unless such future agreements refer specifically to this Agreement.

15. RECORDS MANAGEMENT.

15.1 **Records.** The parties acknowledge that in connection with this Agreement, Vendor will generate and/or receive certain information and/or documents related to this Agreement as set forth in Exhibit B attached hereto (each, a "Record"). Records may be in hard copy or electronic form.

15.2 **Compliance.** Vendor shall manage Records and comply with all of the requirements set forth on Exhibit B, and other relevant Customer corporate requirements communicated to Vendor in writing, including, without limitation, the retention period and destruction requirements. Customer may request proof of retention and/or destruction compliance from time to time.

15.3 **History.** Vendor shall also maintain a history as of when it receives or creates new classes of Records pursuant to this Agreement as outlined in Section 15.2 above, and shall update Exhibit B from time to time to reflect such new classes of Records. This historical documentation shall be maintained during the Term of this Agreement and for a period of five (5) years after the non-renewal or termination of this Agreement, unless otherwise agreed to in writing by the parties. Customer may request a copy of the historical documentation from time to time.

15.4 **Destruction.** Vendor shall destroy Records, in all forms of media, in accordance with Exhibit B and shall provide evidence acceptable to Customer of said destruction, pursuant to a certificate of destruction or otherwise, upon Customer's request. Physical Records must be shredded beyond recognition and electronic Records must be cleaned from hardware pursuant to Department of Defense 5220.00-M standard.

15.5 **Removal from Destruction Cycle.** Upon written direction from Customer due to evidentiary, regulatory or other reasons, Vendor shall remove from the destruction cycle (and not destroy) Records otherwise scheduled for destruction. Upon (and only upon) further written direction from Customer, Vendor shall destroy such removed Records in accordance with the terms of this Section.

15.6 **Search Requests.** Vendor shall promptly comply with Records search requests from Customer and provide copies of any Records to Customer upon its reasonable request.

15.7 **Ownership and Return.** Customer is the owner of any Records related to this Agreement and Vendor is the custodian of any Records related to this Agreement. Vendor shall promptly return all Records to Customer upon its reasonable request. All Records maintained by Vendor are the property of Customer and shall be returned to Customer at the end of this Agreement unless otherwise specified in this Agreement or otherwise agreed to in writing by the parties.

15.8 **Confidentiality and Privacy.** The other confidentiality and privacy provisions of this Agreement relevant to Records shall also apply.

16. INDEMNIFICATION.

16.1 **Liability.** Vendor will, at its expense, indemnify, defend and hold harmless Indemnitees from all Losses claimed by any third party, by Customer, by any Customer Personnel or by any Vendor Personnel and all Losses suffered by an Indemnitee in any claim, demand, settlement, suit or proceeding in connection with, or arising out of, any of the following:

- (a) The breach by Vendor or any Vendor Personnel of its or their representations, warranties and/or obligations to Customer under this Agreement;
- (b) The death or bodily or personal injury of, or other legally enforceable damage incurred by any agent, employee, customer, business invitee, or business visitor or other person caused by the breach of contract, breach of warranty, negligence, gross negligence or willful misconduct of Vendor or Vendor Personnel;
- (c) The damage, loss or destruction of any real or personal property, including Customer furnished materials and/or Facilities and property of Customer Personnel, either at Vendor's site or a Customer Facility, caused by the breach of contract, breach of warranty, negligence, gross negligence or willful misconduct of Vendor or Vendor Personnel;
- (d) That Vendor, or any of its Personnel, was negligent, grossly negligent or committed an intentional act during the course of this Agreement, that caused injury to a third party (including Customer's Personnel), or caused damage to a third party's property (except to the extent such damages arose out of the negligence, gross negligence or intentional conduct of Indemnitee);
- (e) Any claim or action brought by any third party for actual or alleged infringement of any patent, copyright, trade secret or other Intellectual Property right based upon Customer's or its customers' use of any System, Services and/or any component thereof, or Third Party Materials, under this Agreement or Customer's other use as permitted under this Agreement;
- (f) That Vendor's Personnel are alleged to be Customer's Personnel; or
- (g) That Vendor or any of its Personnel failed to comply with an applicable Law.

16.2 **Procedure.** The following procedures will apply to all claims for indemnification under this Section:

- (a) Promptly after receipt by an Indemnitee of written notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim for which an Indemnitee may be entitled to indemnification, written notice of such claim will be conveyed to Vendor. However, no failure to notify Vendor will relieve Vendor of its obligations under this Agreement.
- (b) Vendor and each Indemnitee will have the right to select its own legal counsel and experts and to control its own defense in any negotiations, litigation or proceeding pertaining to a claim covered by this Section (as to Indemnitees, notwithstanding that Vendor is bearing the cost of the Indemnitees' attorneys, court costs, legal expenses and other costs of defense. Vendor will promptly reimburse the Indemnitees for all such costs and expenses, demand for which may be made periodically). In addition, Vendor and Indemnitee will make good faith efforts to coordinate their activities so as to take consistent positions in the course of negotiations or litigation.
- (c) Each Indemnitee shall have the right to participate in settlement discussions. Vendor will obtain the prior approval, which approval will not be unreasonably delayed, conditioned or withheld, from each Indemnitee in respect of any proposed settlement of any claims before entering into any settlement of such claims or ceasing to defend such claims. In the event of a disagreement in defending a particular claim or negotiating a settlement thereof, Customer has the right to enter into a reasonable settlement of the claim.
- (d) If Vendor fails to participate in the defense of a claim covered by this Section, each Indemnitee, in addition to its defense rights under this Section, will have the right to defend the claim in such manner as they may deem appropriate, at Vendor's cost and expense (including without limit reasonable attorney fees incurred by an Indemnitee). Vendor will promptly reimburse, and in any

case within no less than thirty (30) days, each Indemnitee for all such costs and expenses, demand for which may be made periodically.

17. LIMITATION OF LIABILITY.

17.1 **Limitations of Liability.** Except with respect to: (a) Vendor's or Vendor's Personnel's obligations, as set forth in this Agreement, with regards to confidentiality (including, without limitation, those obligations set forth in Section 13), indemnification (defending and/or holding harmless) (including, without limitation, those obligations set forth in Section 16), privacy (including, without limitation, those obligations set forth in Section 14), and that derive from Vendor's warranty under Section 12.5; and/or (b) gross negligence or willful misconduct of Vendor or Vendor's Personnel, as to which the following limitations do not apply, in no event shall either party be liable one to the other for any indirect, special, exemplary, punitive or consequential damages in connection with this Agreement.

17.2 **Customer Approvals.** Customer has various review and approval rights under this Agreement, including, without limitation, the right to approve on-site Vendor Personnel and Vendor's Programs. In no event shall Customer's review or approval create any responsibility or liability on the part of Customer for the performance of Vendor Personnel, the completeness, sufficiency or compliance with Laws or Vendor's Programs, or for any other matter with respect to the exercise of such review or approval. Vendor acknowledges and agrees that any such reviews undertaken or approvals granted by Customer shall not limit or waive any right or remedy Customer has or may have against Vendor under this Agreement.

18. TERM.

18.1 **Agreement.** This Agreement shall begin on the Effective Date and shall remain in effect for the Initial Term, unless otherwise terminated in accordance with this Agreement. Notwithstanding the foregoing, the Term of this Agreement shall continue as to each particular Schedule until the term for that particular Schedule (if different than as stated in this Section) has expired or that particular Schedule has otherwise been terminated as provided in this Agreement.

18.2 **Services.** The term for Services provided under this Agreement shall continue until completion of the Services or the date specified in an applicable Schedule, whichever is later.

19. TERMINATION OF THIS AGREEMENT AND/OR SCHEDULES.

19.1 **By Either Party.** Either party may, at its option, terminate this Agreement and/or any Schedule(s):

- (a) Immediately upon written notice, if the other party breaches or is in default of its obligations as set forth in this Agreement or any Schedule(s), provided, however, except as to breaches of confidentiality, privacy or proprietary rights or breaches not capable of being cured, the party in default shall have thirty (30) days to cure such default following written notice of default from the other party.
- (b) Immediately upon written notice if the other party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization.

19.2 **Termination in Connection with a Vendor Change of Control.** Customer or its successor(s) may, at its option, in addition to its other termination rights, terminate (without penalty or termination fee) this Agreement and/or any Schedule(s) after a Vendor Change of Control Event by delivering to Vendor within one hundred eighty (180) days after the Vendor Change of Control Event a written notice of termination for change of control setting forth the date of termination, which date, unless otherwise agreed by Customer or its successor(s) and Vendor, will be at least thirty (30) days after the date the written notice is delivered to Vendor. This Agreement and/or the applicable Schedule(s) will terminate automatically on the date set forth in the written notice unless the notice is rescinded by Customer in writing prior to the termination date.

19.3 **Termination without Cause.** Customer may, at its option and without cause, in addition to its other termination rights, terminate (without penalty or termination fee) this Agreement and/or any Schedule(s) upon written notice to Vendor of the effective date of such termination. Upon the effective date of termination under this subsection, Customer shall remain responsible for paying Vendor the outstanding fees for Services rendered and any outstanding invoices as set forth in this Agreement and/or any applicable Schedule(s) up to the termination date.

19.4 Effect of Termination. Upon termination of this Agreement and/or any Schedule(s), the parties will have the following obligations:

- (a) Each party will return the other party's Confidential Information provided, however, each party shall, subject to the terms of this Agreement governing Confidential Information, retain the other party's Confidential Information which is necessary for performance under this Agreement and any applicable Schedule(s) which remain(s) effective after the termination of any other Schedule(s);
- (b) Upon termination of a Schedule, Customer shall immediately pay all outstanding amounts due and owing under that Schedule including all fees owed for Services rendered as required under this Agreement as of the effective date of termination, provided however, that Customer shall receive a pro rata refund of all prepaid fees for Services not performed;
- (c) If Customer terminates a Schedule for Services with an annual Service fee, Customer shall receive a prorated refund of the annual Service fee paid for the then-current term;
- (d) With respect to an applicable Schedule for Services, Vendor will provide to Customer all written materials, including records, notes, data, memoranda, models, source code (if applicable), object code, flow charts, etc., that constitute work in progress; and
- (e) Vendor will return any Customer equipment and property of any nature that are in Vendor's possession or subject to Vendor's control, provided however, Vendor shall retain any such equipment and property which is necessary for performance under this Agreement and any applicable Schedule(s) which remain(s) effective after the termination of any other Schedule(s).
- (f) All provisions of this Agreement and/or a Schedule relating to representations, warranties, confidentiality, privacy, ownership, indemnification, limitations of liability and any other subject that would, by its nature, be deemed to survive termination of this Agreement and/or a Schedule (whether or not so expressly stated), will survive the termination or non-renewal of this Agreement and/or a Schedule.

19.5 Termination Assistance for Systems and/or Services.

- (a) Upon non-renewal or termination of this Agreement for any reason, other than termination of this Agreement by Vendor as a result of Customer's insolvency, Vendor will, at Customer's request, provide termination assistance, as described in this Section, on the terms set forth in this Agreement during the Termination Assistance Period.
- (b) During the Termination Assistance Period, Vendor will cooperate with Customer and its designees and provide the assistance reasonably requested by Customer or its designee to allow Customer's business operations to continue without material interruption or adverse effect and to facilitate the orderly transfer of responsibility for the Systems and/or Services then being provided by Vendor to Customer or its designees, including the following:
 - (i) Continuing to provide the Systems or perform the Services then being performed by Vendor;
 - (ii) Developing, with the assistance of Customer or its designees, a plan for the transition of the Systems and/or Services then being provided and/or performed by Vendor to Customer or its designees;
 - (iii) Providing training for Personnel of Customer or its designees in the performance of the Services; and
 - (iv) Vendor will use reasonable commercial efforts to assist Customer or its designees to obtain (on a non-exclusive basis) any third party products or services then being used by Vendor in the provision of the Systems or performance of the Services.

20. BUSINESS CONTINUITY. Vendor will provide to Customer, on or before the Effective Date and annually thereafter, a Business Continuity Plan covering Vendor's overall company business operations and the Systems and Services to be provided by Vendor under this Agreement. Vendor will review any comments and suggestions presented by Customer with respect to Vendor's Business Continuity Plan and take commercially reasonable steps to implement such comments and suggestions. Upon Customer's request, Vendor will also review Customer's Business

Continuity Plan, prepare recovery procedures for each System and Service that will be recovered (if such procedures are not already part of Customer's Business Continuity Plan) and, at Customer's request, participate in Customer's recovery tests. At Customer's request, Vendor will allow Customer or its designated representatives to audit Vendor's compliance with Vendor's Business Continuity Plan. Vendor will cooperate with and comply with all reasonable requests from Customer or its designated representatives in connection with such audit.

21. AUDITS.

21.1 **Financial Audits.** At Customer's request, but not more often than once per year, Vendor will allow Customer or its designated representatives to audit its accounting and financial books and records to the extent necessary to verify Vendor's charges to Customer for a preceding twelve (12) month period and/or to audit Vendor's financial strength. Vendor will cooperate with and comply with all reasonable requests from Customer or its designated representatives in connection with such audit. Upon completion of any such audit, Customer and Vendor will review the audit report together with respect to Vendor's charges and work in good faith to agree upon (a) any adjustment of charges to Customer (including any reimbursement of any overpayment by Customer); and (b) any appropriate adjustments to Vendor's billing practices. If any such audit discloses overpayments that in the aggregate equal five percent (5%) or more of the amounts that were actually due, as shown by the audit, then Vendor will reimburse Customer for the costs of the audit.

21.2 **Operational Audits.** Customer may audit or otherwise monitor Vendor's performance of its duties under this Agreement at any time, and with or without written notice.

21.3 SSAE 16 Reports.

- (a) Vendor agrees to provide to Customer, at no cost to Customer, within the earlier of (i) ninety (90) days after the end of each calendar year or (ii) thirty (30) days after Vendor's receipt, a copy of the Vendor's Statement on Standards of Attestation Engagements No. 16 ("SSAE 16") report for that particular calendar year, including a bridge letter if needed, to ensure the complete calendar year is covered. Each SSAE 16 report and bridge letter must be a Type 2 report (either SOC 1 or SOC 2) that is relevant to the Services. A Type 1 SSAE report, which does not include actual testing of the controls, will not be acceptable. In addition, Customer, from time to time, upon at least two (2) weeks' notice to Vendor, may conduct an on-site audit of Vendor's controls. Without limiting Customer's other rights or remedies, Vendor shall reimburse Customer upon demand for the cost of each such audit conducted by or on behalf of Customer where Vendor is in breach of its obligations under this Section. Vendor will also provide Customer, at no cost to Customer and within thirty (30) days after Vendor's receipt, the results of any on-site security and/or network reviews (1) Vendor performs on itself or on any Subcontractor or (2) any Subcontractor performs on Vendor.
- (b) In the event Vendor has subcontracted any of its operations to a Subcontractor which operations are determined by Customer to be material to the performance of this Agreement or to Vendor's business operations, Vendor agrees to provide to Customer, at no cost to Customer, within the earlier of (i) ninety (90) days after the end of each calendar year or (ii) thirty (30) days after Vendor's receipt, a copy of that Subcontractor's SSAE 16 report for that particular calendar year, including a bridge letter if needed, to ensure the complete calendar year is covered. Each SSAE 16 report and bridge letter must be a Type 2 report (either SOC 1 or SOC 2) and Customer must be entitled to rely upon the report (including getting a reliance letter from the auditor, if needed). If Vendor fails to provide Customer with any such report for a particular Subcontractor in the time and manner required in this Section, then Vendor agrees, at its cost, within sixty (60) days after notice from Customer, to perform or cause to be performed a SSAE 16 Type 2 audit or an Information Technology general controls audit of that party utilizing audit staff which possess either a Certified Public Accountant certification from their home state or a Certified Information Systems Auditor certification from ISACA (Information Systems Audit and Control Association). This audit must also include testing procedures from Customer, including an appropriate IT General Controls program based upon Sarbanes Oxley (SOX) control objectives. Such audit report will be delivered to Customer within ninety (90) days after such audit notice is given to Vendor by Customer.

21.4 **Governmental Review and Audit.** Vendor agrees to allow all necessary state and federal governmental entities to conduct an audit of Vendor's Facilities and books if required in association with Customer's operations.

22. CHOICE OF LAW. This Agreement shall be construed in accordance with the Laws of the State of Michigan excluding its conflict of law provisions.

23. EXCLUSIVE JURISDICTION. Vendor and Customer agree that the exclusive jurisdiction for the institution and maintenance of any action for judicial relief shall be in either the State courts sitting in Wayne County, Michigan or the United States District Court for the Eastern District of Michigan. Customer and Vendor hereby waive any claim that such court does not have personal jurisdiction over it or is an inconvenient forum.

24. GENERAL.

24.1 Independent Contractor Relationship. The relationship between Customer and Vendor is that of independent contractor. Nothing in this Agreement is intended as, or will be deemed or construed as, creating a relationship of principal and agent, joint venturers, partnership, employer-employee, or franchisor-franchisee. Both parties agree to take such steps as are reasonably requested by the other party to ensure that each party will be deemed an independent contractor. Neither party has the authority to create any obligations for the other, or to bind the other to any representation or document. Neither Vendor, nor any Vendor Personnel, will be entitled to participate in any employee fringe benefit of Customer, including health insurance, dental insurance, paid vacation or other benefits provided by Customer to its employees. Vendor shall be solely responsible for:

- (a) Recruiting, interviewing, testing, selecting, hiring, training, evaluating, counseling and disciplining such Personnel used by Vendor in connection with this Agreement. All persons furnished, used, or hired by or on behalf of Vendor will be solely Vendor's Personnel, and under no circumstances are they to be considered Customer's Personnel. Customer's exercise of its rights under Section 9.4 or 9.5 does not diminish Vendor's responsibilities under this subsection.
- (b) Payment and/or withholding of all applicable federal, state and local income, unemployment, social security, and other taxes for its Personnel, as well as workers compensation and any other assessments or contributions required by Law. No such taxes, workers compensation or other assessment will be paid or withheld by Customer on behalf of Vendor's Personnel. Vendor will furnish, upon Customer's request, a certificate of compliance with all applicable tax Laws.

24.2 Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision will be deemed restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable Law, and, if capable of substantial performance, the remaining provisions of this Agreement will be enforced as if this Agreement were entered into without the invalid provision.

24.3 Force Majeure. If either party is prevented, hindered or delayed in the performance or observance of any of its obligations under this Agreement by reason of a Force Majeure Event, that party will be excused from any further performance or observance of the obligations so affected for as long as such Force Majeure Event prevails and that party continues to use all commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay (including compliance with that party's Business Continuity Plans). The party affected by a Force Majeure Event will advise the other party in reasonable detail of the Force Majeure Event (including the estimated duration of the Force Majeure Event) as promptly as practicable (and in any event within four (4) Business hours after occurrence of the Force Majeure Event) and keep the other party reasonably apprised of progress in resolving the Force Majeure Event.

24.4 Waiver. Any waiver of a provision of this Agreement or of a party's right or remedy under this Agreement must be in writing and signed by the party to be effective. Failure or delay by a party to enforce its rights or remedies under this Agreement at any time will not be deemed a waiver and will not affect the validity of this Agreement or prejudice such party's right to take subsequent actions.

24.5 Notices. All notices under this Agreement must be in writing and sent either by hand delivery; certified mail, return receipt requested; overnight courier; email; or by facsimile (with a confirming copy by certified mail or overnight courier) and will be effective when received by such party, or refused by such party, at the address for notice given at the end of this Agreement or such other address as will have been provided in writing.

For Vendor, such notice shall be provided to:

Attn: _____

Facsimile No.: _____
Telephone No.: _____

For Customer, such notice shall be provided to:

Great Lakes Water Authority
Attn: _____
735 Randolph Street, _____ Floor
Detroit, Michigan 48226
Facsimile No.: _____
Telephone No.: _____

24.6 **Assignment.** Neither party may assign or sublicense this Agreement without the other party’s prior express written consent. Any attempted assignment or sublicense without such consent will be void. However, Customer may, without the prior consent of Vendor, assign or sublicense all or a portion of its rights and responsibilities under this Agreement to any entity that succeeds to or acquires, in whole or in part, the operations of Customer. In such case, and as soon as practicable thereafter, Customer shall provide written notice of such assignment or sublicense. The rights and duties of the parties shall inure to the benefit of and be binding upon their respective successors and permitted assigns and sub-licensees.

24.7 **Publicity.** Neither party will use the other party’s name, trademarks or service marks or refer to the other party directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or its subject matter to the extent the materials in such media release, announcement or disclosure have not previously been made publicly available, without the other party’s prior written permission to do so. In the event Customer agrees to such use, Vendor agrees to comply with any conditions Customer may impose and all of Customer’s relevant established rules, processes, and procedures. This restriction includes any promotional or marketing materials, customer lists or business presentations (but not including any announcement intended solely for internal distribution by a party or any disclosure required by legal, accounting or regulatory requirements). Both parties agree to submit to the other party all advertising, sales, promotions, and other publicity material relating to any product, system or service in which either party’s name is mentioned or language is used from which the connection of either party’s name may be reasonably inferred or implied. Either party may refuse such consent, with or without cause or explanation.

24.8 **Office of Foreign Assets Control (OFAC) Provision.** Vendor hereby warrants that, in performing its obligations hereunder, it shall not employ, or subcontract with, any individual or entity that is an SDN or employs an SDN, and Vendor represents that it is not an SDN.

24.9 **Discrimination.** Vendor and Customer agree, in performing any work required by this Agreement, not to discriminate against any person because of race, creed, color, sex, age, national origin, sexual preference, or disability.

24.10 **Employee Solicitation.** Neither party will solicit, recruit or assist another party in soliciting or recruiting any employees of the other who were materially involved with the performance of this Agreement for a period beginning with the Effective Date of this Agreement and extending for one (1) year after its termination. A general advertisement or a request for employment initiated exclusively by the employee is not considered a solicitation or recruitment. Nothing in this Section, however, will limit a party’s right to hire any employee of the other party who responds to a general solicitation for employment not targeted specifically to such employee or who initiates the request for employment.

24.11 **Mitigate Damages.** Each party shall use diligent efforts to mitigate its damages, losses and expenses under this Agreement.

24.12 **Further Assurances.** The parties covenant and agree to do such things and execute such further documents, agreements and assurances as may be necessary or reasonably advisable from time to time in order to carry out the terms and conditions of this Agreement.

24.13 **Subsequent Litigation.** Vendor agrees that in the event of a legal proceeding (whether threatened or pending, whether investigative, administrative or judicial) involving matters of which Vendor or any of its Personnel has knowledge by virtue of the work or other obligations performed pursuant to this Agreement, Vendor shall disclose to Customer and its counsel any facts known to Vendor or any of its Personnel which might be relevant to said legal proceeding and shall cooperate fully with Customer and its counsel so as to enable Customer to present any claim or

defense which it might have relating to such matters. For purposes of this Section, “cooperate fully” shall mean that Vendor shall make its Personnel reasonably available for interviews, depositions, and testimony as directed by Customer or its counsel, and shall further execute truthful statements, declarations, or affidavits pertaining to such matters at the request of Customer or its counsel. Nothing in this Section shall be construed as requiring Vendor or any of its Personnel to be non-truthful or as preventing the disclosure of information that would be considered adverse to Customer.

24.14 Costs. Each party shall be responsible for and shall pay its own costs incurred by it in respect to the preparation, negotiation and execution of this Agreement.

24.15 Counterparts and Facsimile. This Agreement may be executed and delivered in two or more counterparts, and/or delivered by facsimile or other electronic transmission, each of which shall be deemed an original and all of which together shall be deemed to constitute one and the same agreement. This Agreement must be executed by a handwritten signature and not by an electronic signature, notwithstanding that it may be electronically transmitted or delivered. Where a party has delivered this Agreement by facsimile or other electronic transmission, it shall forthwith deliver an originally executed copy of this Agreement to the other party, but the failure to do so shall not affect the validity or enforceability of this Agreement.

24.16 Entire Agreement and Amendment. This Agreement (including any Addenda, Schedules, Documentation and exhibits) represents the entire agreement between the parties with respect to its subject matter and supersedes all prior oral or written representations, agreements, or other communications, relating to the subject matter of this Agreement. This Agreement may not be amended or modified except by written agreement signed by each party’s authorized representative. No terms or conditions of either party’s invoice, purchase order or other administrative document (unless signed by both parties and expressly referencing that it amends this Agreement) will be effective as a modification of the terms and conditions of this Agreement, regardless of the other party’s failure to object to such form. In the event that Vendor makes available to Customer various Systems and/or Services that Customer can access or acquire via a Vendor website, including trial products, free products, updates to or replacements of a System, software, problem submissions, bug fixes, new features, new modules, Documentation and other materials, and if access to or use of the same requires Customer to "Accept" various terms and conditions, including, but not limited to, "click-wrap," "click-through," "browse-wrap," or "shrink-wrap" agreements or licenses, such terms and conditions may be "accepted" by Customer in order to access or use the same, provided, however, that the terms and conditions shall be of no force or effect and the terms and conditions of this Agreement shall continue to govern.

24.17 Interpretation. Each party has actively participated in the negotiation and preparation of this Agreement, and no presumption of interpretation in favor of either party shall be made. The necessary grammatical changes required to make the provisions of this Agreement apply either to corporations or other entities or to individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Sections or paragraphs are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Sections or paragraphs. Notwithstanding that some references may say “include” or “including” and others “include without limit” or “including without limitation”, references to “include” or “including” shall mean “include without limit” or “including without limitation”, unless expressly and specifically provided to the contrary.

24.18 Remedies Cumulative. A party’s rights and remedies under this Agreement are cumulative and are not exclusive of (a) such party’s rights and remedies under applicable Law; or (b) such party’s other rights and remedies under this Agreement.

24.19 No Other Third Party Beneficiaries. The parties agree that unless otherwise stated in this Agreement (a) this Agreement is for the benefit of the parties to this Agreement, including their successors and assigns, and is not intended to confer any rights or benefits on any third party (including any Personnel of either party) other than the Indemnitees; and (b) there are no third party beneficiaries to this Agreement or any specific term of this Agreement, other than the Indemnitees.

24.20 Continued Performance. Each party will continue performing its obligations under this Agreement while any dispute submitted to litigation or any other dispute resolution process is being resolved until such obligations are terminated by the expiration or termination of this Agreement or by a final and binding award, order or judgment to the contrary.

