Investment Management Software System Agreement

between

Dormitory Authority of the State of New York

And

[Vendor]

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LIST OF SCHEDULES

Investment Management Software System Agreement

THIS INVESTMENT MANAGEMENT SOFTWARE SYSTEM AGREEMENT (the "**Agreement**", as further defined below) is entered as of [insert date] (the "**Effective Date**") by and between [insert vendor], a [insert] corporation, having a place of business at [insert address]("**Vendor**") and the Dormitory Authority of the State of New York, a public authority, having a place of business at 515 Broadway, Albany, New York 12207 ("**Customer**" or "**DASNY**") (each a "**Party**" and together the "**Parties**").

WHEREAS, DASNY issued a Request for Proposal ("**RFP**") for an investment management software system ("**Investment System**") and related services on [insert date]);

WHEREAS, Vendor submitted a proposal in response to the RFP ("**Proposal**")and understands DASNY's requirements for such INVESTMENT SYSTEM and related services; and

WHEREAS, Vendor has information technology and employees with experience and skills necessary to provide such INVESTMENT SYSTEM and related services.

NOW, **THEREFORE**, in consideration of the foregoing, the mutual covenants and terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Definitions**

1.1 "**Accept**" (and "**Acceptance**," "**Accepted**" and variants thereof as the context requires) means that Customer has determined that the Services or Deliverable has satisfied the Acceptance Criteria.

1.2 "**Acceptance Criteria**" means the requirements, specifications, and/or criteria which the Services or Deliverables, or any part thereof, as applicable, must meet to satisfy the requirements therefor including as set forth in a SOW.

1.3 "**Acceptance Testing**" means testing or assessment by Customer to determine whether a Deliverable meets the requirements of the Acceptant Criteria therefor.

1.4 "**Action**" means any allegation, claim, suit, action, cause of action, demand, lawsuit, arbitration, notice of violation, proceeding, litigation, or regulatory or administration investigation.

1.5 "**Actual Uptime**" means the total minutes in a Sevice Period that the Vendor System is Available.

1.6 "**Additional Services**" has the meaning ascribed thereto in **Schedule 2.6**

1.7 "**Affected Deliverable**" has the meaning ascribed thereto in **Section 6.3**.

1.8 "**Agreement**" means these terms and conditions and all Schedules (including for clarity, any Statement(s) of Work) hereto and all appendices and attachments thereto, as the same may be amended.

1.9 "**Audit Reports**" has the meaning ascribed thereto in **Section 13.2**.

1.10   "**Available**" and "**Availability**" have the meaning ascribed thereto in **Section 11**.

1.11   "**Availability Requirement**" has the meaning ascribed thereto in **Section 11**.

1.12   "**Confidential Information**" has the meaning ascribed thereto in **Section 17.1**.

1.13   "**Confidential Information Party**" has the meaning ascribed thereto in **Section 17.7**.

1.14   "**Configuration Services**" means Vendor's services to provide Configuration.

1.15   "**Credentials**" means passwords, usernames and other credentials used to sign into the Vendor System, including through the Vendor Portal or the Internal Portal.

1.16   "**Cure**" means to fix a Nonconformity so that a Deliverable or other Service complies with the requirements hereof.

1.17   "**Customer Business Purpose**" means the business purposes of the Customer which, without limiting the foregoing, includes use and exchange of data and information with other New York State governmental entities.

1.18   "**Customer Data**" means all data, information, materials, electronic files, or other content, uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by on behalf of Customer or any User for Processing by or through the Vendor System.

1.19   **"Customer Personnel"** means the Internal Users and Customer's other employees and other agents.

1.20   **"Data Migration Services"** means the services to successively migrate data from DASNY's existing investment management system and other data storage systems, to Vendor System.

1.21   "**Deficiency**" is a deficiency, problem or failure that prevents Acceptance or a deficiency, problem or failure that results in the Vendor System not Processing or operating as required hereunder.

1.22   "**Deliverable**" means a deliverable, task, or Service subject to Acceptance.

1.23   "**Disclosing Party**" has the meaning ascribed thereto in **Section 17.1**.

1.24   "**Documentation**" means the requirements and specifications for the Vendor System including the functionality, components, and features or requirements thereof, as updated from time to time to include Updates and other changes made to the Vendor System hereunder.

1.25   "**Fees**" means the fees and charges to be paid by Customer hereunder.

1.26   "**Go-Live**" and the "**Go-Live Date**" means that Customer has Accepted all Implementation and Confirmation Services, Data Migration Services and Transition Services, and that Vendor has prepared the Vendor System so that its steady state operations can begin immediately in accordance with the requirements hereof.

1.27   "**Harmful Code**" means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is

(a) to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner (i) the function of any computer, software, firmware, hardware, system or network or (ii) the security, integrity, confidentiality or use of any data (including Customer Data), or (b) to prevent Customer or any User from accessing or using the Vendor System as contemplated by this Agreement.

1.28 "**Hosting Services**" means the hosting services as described in **Section 14**.

1.29 "**Hosting Vendor**" means Vendor in its capacity as the hosting entity for the Vendor System (in which case all references herein to Hosting Vendor shall be deemed to be to Vendor) or the third-party entity providing the Hosting Services for the Vendor System.

1.30 "**Implementation**" means Vendor's implementation of Vendor System in accordance with the requirements herein.

1.31 "**Implementation Services**" means Vendor's services to provide Implementation.

1.32 "**Initial Term**" has the meaning ascribed thereto in **Section 25.1**.

1.33 "**Intellectual Property Rights**" means (a) all rights under all copyright laws of the United States and all other countries for the full terms thereof (of all rights accruing by virtue of copyright treaties and conventions), including but not limited to all renewals, extensions, reversions or restorations of copyrights now or hereafter provided by Law and all rights to make applications for and obtain copyright registrations therefor and recordation's thereof, and including without limitation all copyright rights in all software, documentation, user and application interfaces including without limitation the look and feel and the structure, sequence and organization thereof; (b) all rights to and under new and useful inventions, discoveries, designs, technology and art and all other patentable subject matter, including, but not limited to, all improvements thereof and all know-how related thereto, and all applications for and the right to make application for Letters Patent in the United States and all other countries, all Letters Patents that issue therefrom and all reissues, extensions, renewals, divisions and continuations (including continuations-in-part) thereof, for the full term thereof; (c) all trademarks, service marks and Internet domain names and the like and the goodwill associated therewith throughout the world; (d) all trade secrets, confidential business information, evaluations and reports; (e) all know-how under the laws of any jurisdiction and all know-how not otherwise included in the foregoing; and (f) all other intellectual and industrial property and proprietary rights throughout the world not otherwise included in the foregoing, including without limitation all techniques, methodologies and concepts.

1.34 "**Key Vendor Personnel**" has the meaning ascribed thereto **Section 3.1**

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

1.36 "**License Rights**" means the rights set forth in **Section 5.1**.

1.37 "**Losses**" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' costs and fees and, if applicable, the costs of enforcing any right to indemnification hereunder.

1.38　"**Maintenance and Support Services**" has the meaning ascribed thereto in **Section 15.1**.

1.39　"**INVESTMENT SYSTEM**" has the meaning ascribed thereto in the first Whereas clause.

1.40　"**Portal**" means the web portal for the Vendor System used by Internal Users, as further set forth in **Section 2.9**.

1.41　"**Process**" (and "**Processing,**" "**Processed**" and other variants thereof as the context requires) means, for the purpose of Vendor's performance of the Services, to perform any operation or set of operations on any Customer Data or User Data, including to: (a) collect, receive, accept, submit, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy within computer memory; (b) process, retrieve, output, use, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available; and (c) block, erase, or destroy.

1.42　"**Proposal**" has the meaning ascribed thereto in the second Whereas clause.

1.43　"**Receiving Party**" has the meaning ascribed thereto in **Section 17.1**.

1.44　"**Reject**" (and **Rejection** and all variations thereof as the context requires) means that the Customer has determined that the Services or Deliverables, and/or part thereof, as applicable, do not satisfy the governing Acceptance Criteria.

1.45　"**Renewal Term**" has the meaning ascribed thereto in **Section 25.1**.

1.46　"**Renewal Term Annual Fee**" has the meaning ascribed thereto in **Section 28**.

1.47　"**Representatives**" means a Party's officials, employees, subcontractors, independent contractors (if any) of each of the Parties as applicable.

1.48　"**Requested Party**" has the meaning ascribed thereto in **Section 17.7**.

1.49　"**RFP**" has the meaning ascribed thereto in the first Whereas clause

1.50　"**Service Period**" has the meaning ascribed thereto in **Section 11**.

1.51　"**Security Breach**" has the meaning ascribed thereto in **Schedule 13**.

1.52　"**Security Services**" means the Services described in **Section 13**.

1.53　"**Services**" means the services provided or to be provided by Vendor (including through its Representatives) to Customer and Users hereunder, including Processing, Configuration Services, Implementation Services, Data Migration Services, Maintenance and Support Services, Training, Transition Services, Security Services, Hosting Services, Additional Services (if any), Vendor Services (if any), other services to create Deliverables, and other services to be performed by Vendor (including by a Vendor Representative) as otherwise agreed upon by the Parties.

1.54   "**Statement of Work**" and "**SOW**" mean a statement of work or project plan together with all appendices and attachments (however designated) entered into hereunder.

1.55   "**Support Team**" has the meaning ascribed thereto in **Schedule 15.1**.

1.56   "**Term**" has the meaning ascribed thereto in **Section 25.1**.

1.57   **"Transition Services"** has the meaning ascribed thereto in **Section 25.2**..

1.58   "**Updates**" means software bug fixes, error corrections, updates, patches (including security patches), upgrades, new versions and new releases of or to the Vendor INVESTMENT SYSTEM solution.

1.59   "**User**" means an employee, agent or Representative of the Customer authorized by the Customer to use the Vendor System and Services and exercise the License Rights.

1.60   "**User Data**" means all information reflecting the access and use of the Vendor System by the Users, any session, click-through or click stream data with a User or all the Users (including in a specified time period) in connection with all or any of the foregoing activities, and any data analytics, statistical or other analysis and reports, whether generated by or on behalf of Vendor (and its hosting services and other vendors) and/or Customer.

1.61   "**Vendor Services Fees**" means Vendor's fees for its Vendor services set forth in **Schedule**

1.62   "**Vendor IT Infrastructure**" means the information technology infrastructure (which includes Security Services technology to protect Customer Data and applications) used by or on behalf of Vendor in providing and support of the Vendor System, including all computers, software, hardware, databases (including database management systems) and networks, whether operated directly by Vendor or through the use of third-party services, including any Hosting Vendor.

1.63   "**Vendor INVESTMENT SYSTEM Solution**" means Vendor's INVESTMENT SYSTEM Solution which includes Investment, Risk Management and Compliance modules with agile reporting capability in a secure platform that will include software implementation services, ongoing training and technical support and such other requirements set forth in **Schedule 2.1**.

1.64   "**Vendor Project Manager**" means the project manager assigned by Vendor to manage the Vendor System approved by Customer, and any successor designated by Vendor and approved by Customer.

1.65   "**Vendor System**" means Vendor's INVESTMENT SYSTEM solution together with the Services and the Vendor IT Infrastructure, as further set forth in **Section 2** (including the Vendor Portal and the Internal Portal) which employs secure access functionality as Configured and Implemented and modified pursuant to the terms hereof, and including all Updates and other updates and modifications to any of the foregoing.

2. Vendor System

2.1   The Vendor INVESTMENT SYSTEM Solution is set forth in **Schedule 2.1** and includes all Updates and all other modifications (provided not objected to by Customer) made thereto during the Term.

2.2   The Vendor INVESTMENT SYSTEM Solution shall be developed and implemented, subject to Acceptance Testing and Acceptance and Go-Live in accordance with the provisions of **Schedule 2.2**, and Vendor shall provide such Services necessary to achieve the foregoing, including Data Migration Services.

2.3   The RFP is attached hereto as **Schedule 2.3** and for the avoidance of doubt is incorporated by reference as if fully set forth herein. Vendor represents, warrants, and covenants during the Term that the Vendor System will meet the requirements set forth in the RFP, subject to Section 37.7. The Vendor System shall provide the INVESTMENT SYSTEM functionality required, all without diminution of functionality or service levels or the other requirements applicable to the Vendor INVESTMENT SYSTEM Solution.

2.4   The Vendor System shall meet the service levels set forth in **Schedule 2.4**.

2.5   Vendor shall provide the Services on an integrated basis and in accordance with the requirements hereof and as necessary for the operation of the Vendor INVESTMENT SYSTEM Solution in accordance with the requirements hereof.

2.6   As part of the Services, and as and if requested by Customer, Vendor shall perform Additional Services in accordance with **Schedule 2.6** and if Fees are owed therefore, Customer shall pay Fees in accordance with **Schedule 2.6** and **Appendix A** thereto.

2.7   As part of the Services, Vendor shall perform Maintenance and Support Services as further set forth in **Section 15**.

2.8   As part of the Services, and at no additional cost, Vendor shall provide the Security Services, as further set forth **Section 13**. Vendor's Security Services shall meet or exceed Customer's security requirements as may be amended from time to time.

2.9   Vendor shall operate the Portals as set forth in **Schedule 2.9** and on an integrated basis with the Services and other elements of the Vendor System.

2.10   As part of the Services or the Vendor INVESTMENT SYSTEM Solution, as applicable, and at no additional cost, Vendor shall provide Hosting Services.

2.11   As part of the Services, at no additional cost, Vendor shall promptly update the Documentation such that at all times it reflects new Updates and the current state of the Vendor System and promptly provide Customer with copies or access to all Documentation after material Updates.

2.12   Vendor shall be responsible for the services (and Services) provided in whole or in part by one or more Vendor Representatives, and the acts or failures to act of any of the Vendor Representatives shall be deemed acts and failures to act of Vendor.

2.13   The Vendor System shall operate in accordance with the Documentation and requirements hereof without necessity of Customer's use of any additional hardware or software not owned, leased or used by Customer as of the Effective Date except as set forth in **Schedule 2.6**. If no hardware or software is set forth in **Schedule 2.6**, then no such additional hardware or software is required for Customer to use the Vendor System. For the avoidance of doubt, Customer (a) is not required to purchase or license any hardware or software to use the Vendor System except web browser technology and connectivity to the Vendor System through the Internet and (b) the Vendor System will operate in accordance with the terms hereof with any major commercial operating system or platform.

2.14   The Vendor System shall have a technical architecture that shall meet or exceed the requirements of **Schedule 2.7**.

2.15   Vendor will provide the Services in accordance with the Documentation and the terms hereof. Vendor shall remedy any Deficiency in or failure of the Services to conform to the Documentation, including as part of the Maintenance and Support Services pursuant to **Schedule 2.11**. Notwithstanding the foregoing, any change in the Documentation that reduces the rights and remedies of Customer (or limits the functionality available to Users) shall not be binding upon the Customer unless agreed upon in writing by the Customer.

2.16   Vendor represents and warrants that it is, and covenants during that term that will, remain duly licensed (as applicable) and Vendor and its Representatives (and for avoidance of doubt, "resources" as set forth below) have, and shall have, the qualifications, the experience and the ability to properly operate the Vendor System including to perform the Services to meet the Acceptance Criteria. Vendor represents, warrants and covenants during the Term that it does not and will not violate any agreement with or rights of any third party in connection with the Vendor Systems or Services or otherwise for or on behalf of the Customer.

2.17   The Vendor project team for the Services will be comprised of qualified Vendor employees (also referred to as "**resources**") having a combination of operational capabilities (project management, system testing and validation, business analysis and so forth) and strategic and specialized technical capabilities (product configuration, data migration, engineering, quality assurance, and so forth) required to provide the Services.

2.18   The Go-Live Date shall be no later than <u>TBD</u> unless agreed upon in writing by the Customer.

3.   Key Vendor Personnel

3.1   Key Vendor Personnel ("**Key Vendor Personnel**") and their positions as part of the Vendor project team are set forth in the RFP.

3.2   Each Vendor employee designated and serving in a position as one of the Key Vendor Personnel shall continue in that position as set forth in the RFP (or part thereof), except in extraordinary circumstances, and absent extraordinary circumstances, shall not provide services for an existing or new Vendor customer in any manner that prevents or could prevent such employee from performing his or her obligations under this Agreement. Extraordinary circumstances include a departure of the employee from Vendor, a promotion, or an illness that prevents an employee from fully discharging the obligations of his or her position. In the event of extraordinary circumstances, Vendor shall propose a successor to the affected employee and provide such information as Customer shall reasonably request to approve

such successor. If Customer does not approve the proposed successor, Vendor shall so propose other successors until one is approved by Customer. Customer's approval shall not be unreasonably withheld.

4.   Statements of Work

The Parties may enter into Statements of Work for Services and Deliverables to be provided by Vendor. A Statement of Work may be amended by written agreement of the Parties. An amended Statement of Work shall be deemed the Statement of Work in place of the prior version of the Statement of Work without the necessity of any further action by either Party. All terms with initial capitalization not defined in an SOW have the meanings set forth in **Section 1**.

5.   License Rights and Vendor System

5.1   Vendor agrees to and hereby grants Customer a non-exclusive, non-transferable, license to use the Vendor System for the Customer's Business Purpose, with the right to sublicense to each User. The foregoing rights are referred to herein as the "**License Rights**." Vendor shall cause the Vendor System to be accessible and capable of being used in accordance with the terms hereof through all major commercial web browsers on desktop and similar computers and mobile devices, including: Internet Explorer, Edge, Chrome, Firefox, and Safari.

5.2   Customer acknowledges that Vendor represents and warrants that it is, and convents that it will remain, the owner of the Vendor System, including all Updates, revisions, improvements, and modifications thereto and derivative works of all or part thereof, and all right, title and interest in and to all Intellectual Property Rights therein (excluding the License Rights), except to the extent of one or more portions licensed to Vendor in which case Vendor is and shall remain in compliance with such licenses.

6.   Acceptance

6.1   Within fifteen (15) calendar days, or a time mutually agreed to by both Parties, of Vendor's delivery of a Deliverable to Customer, Customer shall Accept or Reject the Deliverable.

6.2   If Customer Rejects a Deliverable, it shall identify the Nonconformity(ies) giving rise to the Rejection. Vendor shall have fifteen (15) calendar days to Cure the Nonconformity(ies) at its expense and deliver the corrected Deliverable to Customer for Acceptance Testing. If Customer Rejects the corrected Deliverable, it shall have the right in its sole discretion to either (a) provide Vendor with an opportunity, at Vendor's expense, to Cure the Nonconformity(ies) in a corrected Deliverable within ten (10) calendar days (or such longer period as determined by Customer after consultation with Vendor), or (b) terminate this Agreement without further liability. In the event of such termination, Vendor shall refund all monies paid for Deliverables that Customer cannot or does not use for their intended purpose after such termination Customer within fifteen (15) calendar days of termination. In the event that Customer provides Vendor with the opportunity to Cure the Nonconformity(ies) in the corrected Deliverable, Customer shall conduct Acceptance Testing with Vendor's cooperation and Accept or Reject the corrected Deliverable within ten (10) days or such other period as the Parties may agree upon. The procedures set forth in **Sections 6.2** and **6.3** shall be referred to as the "**Correction Procedures**".

6.3   If an Accepted Deliverable (each an "**Affected Deliverable**") is rendered out of compliance with its Acceptance Criteria because of a Nonconformity in a one or more subsequently delivered Deliverables, Vendor at its expense shall Cure the Noncomformity(ies) in the Affected Deliverable and deliver it to Customer for Acceptance Testing within ten (10) days of Customer's notification to Vendor of

the Nonconformity. Thereafter the Correction Procedures and Customer rights with respect to Rejection, as set forth in **Section 6.2**, shall apply to each corrected Affected Deliverable.

7.   Harmful Code

7.1   Vendor shall not knowingly use, or permit the use of, any Harmful Code.

7.2   If from time to time either Party learns of Harmful Code in the Vendor System or Vendor's technical architecture, it shall notify the other Party, and Vendor shall promptly remove such Harmful Code to the best of its ability and test any affected Deliverables to confirm such removal and operation of the interface in accordance with the requirements hereof. Any failure to operate in accordance with the requirements hereof shall be deemed a Nonconformity to be Cured in accordance with the Correction Procedures.

7.3   Vendor shall assist Customer in investigating whether any Harmful Code negatively affected or affects the accuracy, reliability or accurate transmission of Vendor's data processing or the security of the Customer IT System. Vendor shall be liable for all Losses arising out of, related to or in connection with Harmful Code, which Vendor should have reasonably prevented from affecting the operation of the Vendor System.

8.   Customer Data and User Data

8.1   As between the Parties, Customer shall retain and own all right, title and interest in the Customer Data, including all Intellectual Property Rights and other proprietary rights in and thereto. Subject to the terms hereof, Customer agrees to and hereby grants Vendor a nonexclusive, personal, non-transferable, non-sublicensable (except to the Hosting Vendor, if the Hosting Vendor is not Vendor) license to use Customer Data solely for providing the Services and to enable the Hosting Vendor to host the Customer Data. Such license includes the right to copy, transmit and display Customer Data only as required for the computer operations of the Vendor System and Hosting Vendor and to provide Maintenance and Support Services. As between the Parties, all rights in and to the Customer Data not expressly granted to Vendor are reserved to Customer. Vendor shall not, directly or indirectly, or permit others, to sell, license, lease or otherwise commercialize or monetize any Customer Data.

8.2   Vendor and the Hosting Vendor shall store and Process all Customer Data only at data centers (and data storage resources) in the United States of America.

8.3   Vendor shall provide User Data to Customer upon request. There shall be no limitation on the number of such requests. Vendor has the right to use User Data for the purpose of monitoring and improving the Vendor System, subject to the confidentiality and nondisclosure obligations herein.

9.   Return of Customer Data

9.1   The Vendor System will enable Customer to extract and download all or part of the Customer Data at any time. Without limiting the foregoing, at Customer's request, Vendor shall provide a complete and accurate copy of the Customer Data, which shall be provided at no charge at least once a year during the Term. Vendor shall provide additional copies at Customer's request. The cost for such copies shall be at the Vendor's Professional Service Fees set forth in **Schedule 2.8** or as otherwise agreed upon by the Parties, which Schedule includes Fees for other professional Services provided, or to be provided, by Vendor.

9.2   At no additional cost to Customer, not more than thirty (30) days after the termination or expiration of this Agreement, Vendor will return all Customer Data in the format of Copies of Customer Data designated by Customer as subject to a litigation hold or as otherwise subject to a proceeding by Law shall be maintained by Vendor, as applicable, until advised by Customer in writing that such Customer Data need no longer be so maintained. Customer will notify Vendor of the Customer Representative to whom Customer Data is to be returned.

9.3   Vendor will provide copies of or return the Customer Data to Customer as a database in flat file or such other format agreed upon by the Parties and will provide Customer with a copy of all document files, all on encrypted media or via secured FTP (all in accordance with Customer's instructions). Customer may elect to utilize one of the Vendor partners which are qualified by Vendor on Vendor products to convert or extract the Customer Data for the same. In addition, Customer Data may be returned to Customer in an alternative format designated by Customer.

9.4   Vendor will maintain Customer Data files in the Vendor System (even if Customer Data has been returned to Customer by Vendor) until Customer provides written notification to Vendor expressly directing Vendor to delete and destroy Customer Data from the Vendor System, the Vendor IT System and the Hosting Vendor(s)' storage locations. Vendor will then delete (and cause the Hosting Vendor to delete) Customer Data in electronic form in Vendor's (and the Hosting Vendor's) IT storage locations to the maximum extent possible. Vendor will destroy (and will cause the Hosting Vendor to destroy) all Customer Data in physical form in Vendor's (and the Hosting Vendor's) possession or control. Vendor will promptly confirm to Customer that each of it (Vendor) and the Hosting Vendor has deleted and/or destroyed such Customer Data. Vendor shall not be required to delete any Customer Data that it is required to retain by Law. Vendor shall promptly notify Customer of such Customer Data. Without limiting the foregoing, Customer may delete Customer Data, in whole or in part, at any time, and Customer may direct Vendor to delete Customer Data, in whole or in part, at any time. Without limiting the foregoing, and for the avoidance of doubt, Vendor shall maintain Customer Data in the Vendor System and Hosting System as part of and during the Transition Services.

10.   User Credentials

10.1   Customer, in accordance with instructions from Vendor, shall issue Credentials for the use of the Vendor System to Users. Each Party shall immediately notify the other if it becomes aware of any loss, theft, or unauthorized access, use or disclosure of all or part of any Customer or User Credentials.

11.   Vendor System Availability (Applicable only when Vendor hosts the System)

11.1   Vendor shall make the Vendor System available to Customer and Users at least 99.9% of the time in each calendar month as measured in minutes (the "**Service Period**") during the Term beginning upon the Go-Live Date ("**Availability Requirement**"), excluding when the Vendor System is not available because of and only to the extent of: (a) scheduled maintenance; (b) emergency maintenance; (c) failure of Customer's connectivity to the Vendor System; and/or (d) failure of the network connectivity used by Vendor to deliver the Vendor System, but to the extent not caused by Vendor and/or Hosting Vendor.

11.2   "**Available**" (and "**Availability**," as the context requires) means that the Services meet the Availability Requirement and the requirements of the Documentation. The Service requirements in the Documentation (which shall be initially approved by Customer) shall not be diminished during the Term without the written approval of Customer.

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11.3   Vendor shall notify Customer not less than twenty-four (24) hours in advance of scheduled maintenance. Scheduled maintenance shall: (a) not last for longer than ninety (90) minutes; (b) shall occur between 1:00 am and 5:00 am, Eastern Standard time; and (c) occur no more than once a calendar week, provided that Vendor may request approval of additional time for maintenance which Customer shall not unreasonably withhold.

11.4   As between the Parties, Vendor shall be solely responsible for providing the Availability and operation of the Vendor IT Infrastructure so that it supports the Vendor System, including as required to meet the Availability Requirements, operate in accordance with the requirements of the Documentation, and prevent unauthorized use of, access to or disclosure of Customer Data and User Data.

12.   Service Credits (Applicable only when Vendor hosts the System)

12.1   Vendor shall maintain accurate records of Availability and make them available to Customer upon its request and shall deliver records for the past twelve (12) months (or the portion of twelve (12) months between the Go-Live Date and the expiration of the twelve (12)-month period beginning on the Effective Date during the first year hereof) three (3) months before the expiration of each year in the Initial Term and each Renewal Term.

12.2   If Actual Uptime is less than the Availability Requirements for the applicable Service Period, Vendor shall issue a service credit ("**Service Credit**") in accordance with the following. If Availability is: (a) between 99.5% and 99.99%, the credit shall be $1,500; (b) between 99.5% and 99%, the credit shall be $3,000; and/or (c) between 98.99% and 97%, the credit shall be $6,000. If Vendor meets the Availability Requirement in the three (3) consecutive months immediately after a month for which Vendor owes a Service Credit, the Service Credit shall be forgiven or "earned back." Customer shall apply a Service Credit which has not been earned back to the next successive invoice(s) until extinguished. Any waiver by Customer of its right to receive a Service Credit shall not operate as a waiver of Customer's right to receive Service Credits for future Service Periods.

13.   Security Services

13.1   Without limiting the other provisions of this Agreement and for the avoidance of doubt, the provisions of this **Section 13** shall govern to the extent they provide greater rights, protections and/or remedies to Customer than does the RFP. The provisions of this **Section 13**, including Schedule **2.9**, hereto are referred to herein as the "**Security Services**."

13.2   During the Term of this Agreement, Vendor will implement and maintain administrative, physical, and technical safeguards and measures, including disaster recovery procedures, and including through any Hosting Service, designed to: (a) ensure the security and integrity of Customer Data, and (b) protect against unauthorized access to Customer Data and Customer's IT systems. Such security program will conform to the Security Services requirements and Vendor's most recently completed SSAE18 or SOC2 Type II audit report (or industry-standard substantially similar reports) (collectively referred to as "**Audit Reports**") to the extent satisfactory to Customer. Vendor will maintain the Audit Reports or their equivalent, during the Term and will provide a copy to Customer once per year during the Term, upon Customer's request. In no event during the Term will Vendor materially diminish the protections provided by the controls set forth in **Schedule 2.9** and the then-current Audit Reports. Vendor represents that the specifications and requirements set forth in **Schedule 2.9** satisfy Customer's security requirements disclosed to Vendor.

13.3   Vendor will restrict access by its Representatives to Customer Data using the principal of least privilege and also on a need to know basis, and, in addition, through the use of industry best practices for password protection linked to multifactor authentication.

13.4   Uploading and downloading of Customer Data and User Data must be performed through an encrypted and secure connection by using Hypertext Transfer Protocol Security ("**HTTPS**"). Encryption for data in transit shall include, but not be limited to, Transport Layer Security ("**TLS**") 1.2 or later, Secure Shell (SHH), and/or SFTP. Vendor will maintain 24/7 monitoring sufficient to enable it to respond to and limit the effects of security incidents, intrusion attempts and/or weakness in the Vendor IT Infrastructure, including limitation of the aspects of the same that host or support the hosting of Customer Data.

13.5   Vendor will maintain physical security control acceptable to Customer in place to protect Customer Data and Customer systems and data centers. Vendor will install a then-current leading edge, enterprise application to prevent the introduction of Harmful Code. Without limiting any provisions hereof, Vendor shall restrict access to those servers hosting Customer Data to authorized personal only, and such servers shall be secured and properly monitored to prevent damage or theft. Vendor will confirm to Customer the compliance of the foregoing physical controls on an on-going basis. Notwithstanding any provision hereof, data sanitation and secure destruction of media which contains Customer Data and Customer information must meet the requirements of NYS Sanitation/Security Standard NYS-S13-003. Vendor will maintain the integrity of its assets and prevent any modifications or alterations in Customer Data including during transmission to or from the Vendor System. Without limiting any provisions hereof, Customer Data shall not be modified or copied with the intention of using the same other than as set forth in this Agreement.

13.6   Vendor will maintain logs (including for audit set forth herein) for capturing login attempts, failed login attempts, successful Credential resets, unsuccessful Credential usage, account lock-out status and the IP addresses associated with each of the foregoing. Vendor shall maintain such logs for 12 months.

13.7   No later than the anniversary date of the Effective Date in each year of the Term, a Vendor senior executive skilled in security will meet the Customer Representative(s) designated by the Customer to discuss in good faith the adoption of new technology and improvements in practices to provide increased security and data protection. The Parties recognize that cyber threats have become more sophisticated and it is both Parties' intention to enhance the security measures provided by Vendor. Any improvements will be embodied in an SOW except to the extent included as an update to the versions of Vendor System available to other Vendor customers, and Customer shall pay no additional Fees for the same. Any security enhancements shall be deemed to be added to **Section 13**.

13.8   Customer (and any governmental authority having jurisdiction over the Customer) shall have the right to conduct audits of Vendor compliance with the security requirements in a manner that is designed to minimize disruption to Vendor's normal business operations. The right to audit includes the right to audit access logs and other logs recording the identity of parties having access to the Customer Data.

13.9   For the avoidance of doubt, Vendor shall require the use of multifactor authentication for Users to access the Vendor System.

14. **Hosting Services**

In the event that Vendor shall provide the Hosting Services, the specifications for the Hosting Services will be as set forth in **Schedule 2.10**. The Hosting Services shall comply with the security requirements set forth in such **Schedule 2.10** and compliance with such requirements shall be deemed part of the Security Services. If Vendor proposes to cease acting as Hosting Provider or to change a Hosting Vendor to another Hosting Vendor, it will notify Customer at least ninety (90) days in advance. If Customer in its sole discretion does not accept the replacement Hosting Vendor, Vendor shall promptly endeavor to find a Hosting Vendor acceptable to Customer in Customer's sole discretion, but if it cannot do so, Customer may terminate this Agreement for cause. As part of the Hosting Services, Vendor, at its expense, shall be responsible for the full transition to the new vendor of all Hosting Services then being provided by the then-current Hosting Vendor and migrating all Customer Data to the new vendor without any loss of metadata and as otherwise reasonably required by Customer.

15. **Maintenance and Support Services**

15.1   Vendor shall provide maintenance and support for Customer's and Users' use of the Vendor System in accordance with the requirements hereof as further set forth in **Schedule 2.11** ("**Maintenance and Support Services")**.

15.2   Without limiting the obligations set forth therein, at no additional charge, Vendor will: (a) provide Updates as necessary for the operation of the Vendor System in accordance with the terms hereof, which Updates shall have no known cyber-attack vulnerabilities; (b) issue Updates to the Vendor System on a monthly basis, but subject to **Section 15.4**, provided that major releases will only be implemented into the Vendor System on a quarterly basis; (c) provide Customer with a newsletter highlighting Updates; and (d) provide Customer with comprehensive release notes for each Update. No Update will have any known Harmful Code or cyber-attack vulnerabilities.

15.3   Vendor shall maintain and keep in place a disaster recovery plan and business continuity plan during the Term to avoid or minimize disruptions to the provision of the Services and the operation of the Vendor IT Infrastructure, all in accordance with the terms hereof. Appropriate and sufficient technology and procedures satisfactory to Customer will be implemented by Vendor to backup Customer Data and application and server configurations. Customer shall have the right to require reasonable modifications, technology and/or procedures from time to time, upon reasonable notice to Vendor, in order to enable Customer to maintain compatibility with Customer's IT system and/or procedures, and/or to provide the benefit of improved technology and/or procedures to Customer. Without limitation of Vendor's other obligations herein, the business continuity plan shall be at least as protective as Vendor's Business Continuity and Disaster Recovery Plan set forth in **Schedule 2.12** to prevent loss of availability of Customer resources.

15.4   No Update will be deployed into Customer's production environment until Customer has conducted pre-production evaluation and validation. Vendor, at no additional charge, will provide assistance as reasonably required by Customer to evaluate and validate each Update. Vendor will deploy an Update into production only after receiving written notice of approval to do so from Customer excluding those required to fix emergency security issues.

16.   Training

Vendor will provide training as set forth in **Schedule 2.1**3 and will be paid in accordance with the provisions set forth under **Section 29**.

17.   Confidentiality

17.1   In connection with this Agreement, each Party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (as the "**Receiving Party**"). "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that is identified as confidential at time of disclosure or if the circumstances of disclosure would reasonably indicate confidential treatment, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing, (a) all Customer Data (including all personally identifiable information) is and will remain the Confidential Information of Customer; (b) the Vendor System technology and the Documentation are and will remain the Confidential Information of Vendor (except to the extent disclosed through Customer's or other customer's receipt and use of the same in accordance with the terms hereof or other customers use of the Vendor System however configured and implemented); and (c) the terms and existence of this Agreement are the Confidential Information of each Party. Notwithstanding the foregoing, the user interfaces of the Vendor System and other portions of the Vendor System, including the related Documentation, and dashboards, available to Customer (and/or Users) shall not be deemed Confidential Information of Vendor. In addition, and notwithstanding the foregoing, Confidential Information that is required to be disclosed pursuant to a freedom of information act request or pursuant to other Law shall be disclosed as so required, and after such disclosure, such information shall not be considered Confidential Information hereunder (except to the extent that the information retains Confidential Information status pursuant to applicable Law). The Customer will notify Vendor in the event that disclosure of Confidential Information is requested as part of a freedom of information act request.

17.2   Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such Confidential Information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information. The foregoing provisions of this **Section 17.2** do not apply to any Customer Data (including all personal information), and Customer Data shall remain Confidential Information of Customer even if it would otherwise be subject to the foregoing subsections (a), (b), (c) and/or (d).

17.3   Neither Party will disclose this Agreement or any of its contents or terms to any third party except as Customer may be required by Law or for use for the Customer Business Purposes. Upon termination of this Agreement, Vendor y will deliver to the Customer all Confidential Information of the Customer in the Vendor's possession and/or delete electronic copies of all of the same from Vendor's (and its vendors') IT storage locations to the maximum extent possible. .

17.4   As a condition to being provided with any disclosure of or access to Disclosing Party's Confidential Information, the Receiving Party shall:

(a)   not access or use such Confidential Information other than as necessary to exercise its (the Receiving Party's) rights or perform its obligations under and in accordance with this Agreement;

(b)   except as may be permitted by and subject to its compliance with this **Section 17**, not disclose or permit access to such Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations hereunder; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section, including the following:

(A)   safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care: (i) with respect to trade secrets, for so long as such trade secrets qualify as trade secrets under applicable state law, (ii) with respect to Vendor's obligations with respect to Customer Data (including all personal information), in perpetuity, and (iii) with respect to all other Confidential Information, six (6) years from the date of receipt or (if longer) for such period as the information remains confidential; and

(B)   ensure its personnel's (including Representatives') compliance with and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 17**.

17.5   If Vendor learns of any actual or attempted unauthorized access to the Confidential Information or Customer Data that would require notification under applicable Law relating to a data breach, Vendor will (a) immediately notify Customer of all details known to Vendor and regularly supplement the same with new information as it is discovered; (b) bear responsibility for the costs of providing notice and identity protection services to the extent it is a data breach of Vendor or caused by or through Vendor; and (c) at its cost, assist Customer in its obligations under Law.

17.6   Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations pursuant to **Section 17** would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available hereunder at law, equity or otherwise.

17.7   If any Party receives a request or direction of any kind (including, without limitation, a subpoena or the equivalent thereof) or is compelled by applicable Law (the "**Requested Party**") to disclose or otherwise make available ("**disclose**" or "**disclosure**" as used in this Section) any Confidential Information or other information of the other Party (the "**Confidential Information Party**"), the Requested Party shall: (a) immediately, and prior to making disclosure in whole or in part, to the extent permitted by applicable Law, provide notice to the Confidential Information Party in writing of such request or direction so that the Confidential Information Party can seek a protective order or other

remedy or waive its rights under **Section 17**, and (b) provide reasonable assistance to the Confidential Information Party, at the Confidential Information Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. To the extent that the Confidential Information Party waives compliance or, after providing the notice and assistance required under this **Section 17**, the Requested Party remains required by Law to disclose any Confidential Information, the Requested Party shall disclose only that portion of the Confidential Information or other information of the Confidential Information Party that the Requested Party is legally so required to disclose and, on the Confidential Information Party's request, shall endeavor to obtain assurances from the applicable court or other governmental authority that such Confidential Information or other information will be afforded confidential treatment.

17.8   Notwithstanding the foregoing, if Vendor receives a subpoena from law enforcement or the government that contains a non-disclosure order, Vendor will (a) attempt to redirect the requestor to Customer, (b) reasonably request that the third-party requestor work with Vendor to identify an official or employee of Customer whom Vendor can notify consistent with such requestor's interest in prohibiting notification, and (c) if unsuccessful with the requirements of subsections (a) or (b), notify Customer when the date on the non-disclosure order has expired.

18.   **Representations and Warranties**

18.1   Each Party represents and warrants to the other Party that:

(a)   it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b)   it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;

(c)   the execution of this Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such Party;

(d)   this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms (except as such enforcement may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, or similar laws related to or limiting creditors' rights generally or general principles of equity); and

(e)   it will, at all times, comply with all Laws applicable to its performance of its obligations pursuant to this Agreement.

19.   **Additional Vendor Representations, Warranties, and Covenants**

Vendor represents, warrants and covenants to Customer, during the Term of this Agreement, that: (a) Vendor will perform the Services using Representatives of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement; (b) the Vendor System is and will remain free of Harmful Code, and Vendor will not introduce, or permit any person or entity under its direction or control to introduce, any Harmful Code into the Customer Data; (c) the Vendor System will perform in all material respects in accordance with the

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Documentation when used in material conformance with the terms and conditions of this Agreement; (d) the Services (including, for the avoidance of doubt, the Vendor System) do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, confidentiality rights, and/or privacy rights of any third party or any Law applicable to Vendor's provision of the Services or use of Customer Data; (e) no allegation or claim has been asserted that any part of the Services infringe, misappropriate or otherwise violate any Intellectual Property Rights of any third party; (f) Vendor is not under, and shall not during the term hereof enter into or be under, any obligation, covenant or restriction which would or might operate to prevent or restrict Vendor from performing Vendor's obligations under this Agreement, or which may give rise to any conflict of interest between Vendor and Customer; (g) it will not knowingly include or permit the inclusion of Harmful Code in any of the Services or disable or intentionally render the Vendor System inaccessible to Customer or any User at any time, including during the pendency of any dispute between the Parties; and (h) the Vendor System complies and shall comply with all Laws applicable to services of its nature, and the operation of Vendor System will not cause Customer or any User to violate such Law.

20.   Necessary Rights

Customer represents, warrants and covenants to Vendor that Customer has the necessary rights to grant Vendor to use the Customer Data in the operation of the Vendor System granted herein.

21.   Disclaimer of Warranties

Except For the express warranties set forth in this agreement, each party makes no and hereby disclaims all warranties, weather express , implied , statutory , or other, and each party specifically disclaims all implied warranties of merchant ability, fitness for a particular purpose, title, an non infringement, and all warranties arising from course of dealing, usage, or trade practice. Without limiting the foregoing, vendor makes no warranty of any kind that the services or documentation, or any products or results of the use thereof, will operate without interruption, be compatible or work with any software , system or other services except if and to the extent expressly set forth in the documentation, or be error free. All customer data is provided "as is" and "as available."

22.   Indemnification

To the fullest extent permitted by law, the Vendor shall defend if requested, protect, indemnify and hold harmless the Customer and the Customer's Related Parties from and against any and all liability, loss, claims, Actions, demands, suits, costs, fees, interest and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) and any other Losses , by whomsoever brought and regardless of the legal theories upon which premised, including, but not limited to those arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Customer or the Customer's Related Parties allegedly or actually arising out of or resulting from (a) any negligent act, error or omission or any intentional misconduct (i) of the Vendor; (ii) of the Vendor's Representatives or other Vendor consultants or subconsultants; and/or (iii) of the agents, employees or servants of the Customer or its consultants or subconsultants; (b) a breach by Vendor of Section 17 (Confidentiality); and/or (c) Sections 19 (b), 19(d) and/or, 19(g) (Additional Vendor Representations, Warranties and Covenants). The Vendor shall also indemnify the Customer for breach of Agreement not related to Vendor services.

23.   Apportionment

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility issued by a court of competent jurisdiction, that allocates responsibility to the Customer on the basis of its own negligence or willful misconduct, the Customer agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any uninsured money judgment for which the Customer is so responsible.

24.   Mitigation

24.1   At its option and sole cost and expense, Vendor is entitled to mitigate the risk or losses of any actual or threatened infringement, misappropriation, or other violation of any third-party's Intellectual Property Right by:

(a)   obtaining the right for Customer to continue to use the Services (including the Vendor System) and Documentation as contemplated by this Agreement, provided that such does not degrade the performance or quality of the Services or adversely affect Customer's intended use of the Services as contemplated by this Agreement;

(b)   modifying or replacing the Services (including the Vendor System) and Documentation, in whole or in part, to make the Services and Documentation (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality (provided that the same does not degrade the performance or quality of the Services or adversely affect Customer's intended use as contemplated by this Agreement), provided any such modifications or replacements will constitute Services and Documentation, as applicable, under this Agreement; or

(c)   if options (a) or (b) are not commercially reasonable after diligent effort at reasonable cost, taking into account the importance of the Services to Customer, Vendor, by written notice to Customer, may terminate all or part of this Agreement with respect to the affected Services to the extent workable, or otherwise all Services, and Customer shall cease use of such Services or any specified part or feature thereof; and Vendor shall promptly pay Customer a refund equal to the balance of any prepaid amount for the affected services, but, without limiting Vendor's obligation regarding the return, deletion and/or destruction of Customer Data.

25.   Term and Termination

25.1   The initial term ("**Initial Term**") of this Agreement shall be a three- (3) year or five- (5) year period beginning on the Effective Date. The Initial Term may be extended, upon mutual agreement of both parties in writing, for successive one (1) year term periods (each a "**Renewal Term**") or such other term mutually agreed upon by both parties, unless Customer provides notice not less than sixty (60) days prior to the end of the Initial Term or then-current Renewal Term, as applicable, that it will not enter into a Renewal Term or another Renewal Term. The Initial Term and any Renewal Term(s) shall be referred to as the "**Term**."

25.2   Upon the expiration or termination of this Agreement for any reason, Vendor shall provide services as necessary and reasonably required to transition the Services to another vendor selected by Customer, including the successful migration of Customer Data and integration of the Services with a new hosting vendor if a third-party hosting vendor will be used by such other vendor to deliver the Services (the "**Transition Services**"). Transition Services will be provided and paid for pursuant to a SOW

entered into between the Parties to govern Transition Services. The period of Transaction Services shall be deemed part of the Term.

25.3   If Vendor defaults by failing to substantially perform, in accordance with the terms of this Agreement, as determined by Customer, Customer may give written notice to Vendor (a) terminating this Agreement effective seven (7) calendar days from the date of notice; or (b) setting forth the nature of the default and requesting Vendor to initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if Vendor fails to initiate cure upon the request of Customer and to continue such cure until complete, Customer may give notice to Vendor of immediate termination. If Customer terminates this Agreement pursuant to this Section, and it is subsequently determined by a court of competent jurisdiction that Vendor was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in **Section 25.4** of this Article.

25.4   Customer may at any time give written notice to Vendor terminating this Agreement or suspending this Agreement, in whole or in part, for the Customer's convenience and without cause. If Customer terminates this Agreement or suspends the Agreement, Vendor shall immediately reduce its staff, services, and outstanding commitments in order to minimize the cost of termination or suspension if so requested by Customer.

25.5   Upon suspension or alteration of this Agreement by Customer:

(a)   Customer may order Vendor in writing to suspend, delay, or interrupt performance of all or any part or the Agreement for a reasonable period as Customer may determine. The order shall contain the reason or reasons for its issuance.

(b)   Upon receipt of a suspension order, Vendor shall, as soon as practicable, suspend performance of the Agreement as ordered.

(c)   Vendor specifically agrees that such suspension, interruption, or delay of the performance of this Agreement pursuant to this Section shall not increase the Fees due hereunder of the Services of this Agreement.

(d)   No claims for increased costs, charges, expense, or damages of any kind shall be made by the Vendor against the Customer for any suspension, interruption, or delay from any cause whatsoever; provided that time of completion of the Services may be extended to such time as Customer, at its sole and exclusive discretion, determines shall compensate for the time lost by the suspension, interruption, or delay; such determination shall be set forth in writing by Customer.

26.   Termination for Cause

If the Vendor defaults by failing to substantially perform, in accordance with the terms of this Agreement, as determined by Customer, Customer may give written notice to the Vendor of its intent to declare default hereunder and to terminate this Agreement. Such notice shall state the reason(s) for the Customer's intent to declare default hereunder and terminate and give the Professional the opportunity to initiate a cure within seven (7) calendar days from the date of notice. At any time thereafter if Vendor fails to initiate cure upon the request of the Customer and continue such cure until complete, the Customer may give notice to the Vendor of immediate termination. If the Customer terminates this Agreement pursuant to this Section, and it is subsequently determined by a court of competent

jurisdiction from which no appeal can be taken that the Vendor was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Section 25.4 above.

27. Payment in Case of Termination or Suspension

27.1 Except to the extent otherwise subject to Section 6, this Agreement Services is terminated by the Customer pursuant hereunder, no further payment shall be made to the Vendor until completion of the Project. At such time, the Vendor's compensation shall, at the Customer's option, be calculated (i) subject to the Section 28.2, on the basis of services actually performed and approved by the Customer and expenses actually incurred from the date of the final approval by Customer of Vendor System and Vendor services, up to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the Vendor's compensation shall be reduced by all costs and damages incurred by the Customer as a result of the default or breach by the Vendor.

27.2 If this Agreement is (a) terminated by the Customer pursuant to this Agreement, or (bi) suspended more than four (4) months by the Customer pursuant to this Agreement , the Vendor's compensation shall be calculated on the basis of services (including Services") actually performed and approved by the Customer and expenses actually incurred from the date of final approval of work by Customer and such services provided by Vendor up to the effective termination or suspension date and reasonable costs associated with termination or suspension. In no event shall the Vendor be entitled to compensation in excess of the Fees set forth herein.

27.3 If this Agreement is suspended less than four (4) months by the Customer pursuant to this Agreement, Vendor specifically agrees that such suspension, interruption or delay of the performance of its services (including Services) hereunder shall not increase the fees set forth herein.

27.4 Time of completion of the Services may be extended to such time as the Customer determines shall compensate for the time lost by the suspension, interruption or delay; such determination shall be set forth in writing by the Customer.

28. Fees and Payment

28.1 Subject to the terms hereof, Customer shall pay the Fees for the Vendor System in accordance with the terms hereof.

28.2 Vendor shall send all invoices in the manner and form required by Customer to DASNY, 515 Broadway, Albany, NY 12207, or such other address as Customer may designate. Customer shall pay all invoices in accordance with Customer's standard payment terms and procedures. For the avoidance of doubt, each invoice shall include a description of the completed Services and/or Deliverables covered by such invoice.

28.3 Without limiting any other provisions hereof, final payment shall be made to the Vendor upon satisfactory completion and acceptance by the Customer of all required services performed by the Vendor pursuant to this Agreement or required services performed prior to the termination of this Agreement and upon submission of a certification that all of the Vendor's subconsultants have been paid their full and agreed upon compensation.

28.4 Acceptance by the Vendor of final payment hereunder shall operate as, and shall be, a release to the Customer from all claims and liability to the Vendor and its successors, legal representatives

and assigns for anything done or furnished under or arising out of the provisions of this Agreement except as to the extent otherwise provided herein.   No payment, final or otherwise, shall release the Vendor from any of its obligations under this Agreement.

29.   Timeliness of Payment

Notwithstanding any provision hereof, timeliness of payment and any interest to be paid to Vendor for late payment shall be governed by Section 2880 of the Public Authorities Law, to the extent required by Law.

30.   Data Privacy and Onward Transfer

Vendor shall comply (and shall cause all Vendor Representatives to comply) with all obligations applicable to it pursuant to the General Data Protection Regulation (GDPR) (EU Regulation 2016/679), and all other data protection and privacy Laws, when applicable, with respect to Customer Data and Vendor's obligations hereunder.

31.   Limitations of Liability

31.1   Exclusion of Damages: In no Event will either party or any of its licensors, Service vendors or suppliers be liable for any indirect, incidental, special, punitive, cover , loss of profits or revenue, or consequential damages (including, without limitation, loss of goodwill or loss of use or data) However caused, under any theory of liability, including, without limitation, contract , tort , warranty , negligence or otherwise, even if such party has been advised as to the possibility of such damages. Some jurisdictions do not allow the limitation of incidental, consequential or other damages. In such an event this limitation will not apply to the extent prohibited by law.

31.2   Cap on Monetary Liability: Excluding section 22, and except as otherwise provided in Section 32.1 , in no event will the aggregate liability of either party under or in connection with this agreement or its subject matter, under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability and otherwise, exceed fees paid in the preceding 12 months. The foregoing limitation applies notwithstanding the failure of any agreed or other remedy of its essential purchase.

31.3   The limitations do not apply to obligations under section 32.1 or liability for gross negligence or willful misconduct or data breaches. Other than four cases of vendors gross negligence or willful misconduct, vendors total aggregate liability for losses under section 32.1 and for data breaches shall not exceed Five Million ($5,000,000) and 00/100 dollars. The costs and expenses of defending an action shall not be subject to the foregoing amount.

32.   Insurance

Workers' Compensation Law Requirements

a.   The VENDOR shall purchase at its own expense and maintain until final acceptance of the Project by the OWNER, from a company or companies licensed or authorized to do business in New York State, or otherwise acceptable to the OWNER, insurance policies containing the following types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract

for consultant services by the CONSULTANT or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. The CONSULTANT shall not commence work under the Contract until the CONSULTANT has obtained all the insurance required under this Article:

1) C-105.2 (September 2015, or most current version) - Certificate of Workers Compensation Insurance. The insurance carrier will provide a completed form as evidence of in-force coverage.

2) U-26.3-Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund will provide a completed form as evidence of in-force coverage.

3) GSI-105.2 (2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Group Self Insurance Administrator shall provide a completed form.

4) SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Self Insurance Administrator shall provide a completed form.

b. Disability Benefits

1) DB-120.1 (September 2015, or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law. The insurance carrier will provide a completed form as evidence of in-force coverage.

2) DB-155 (September 2016, or most current version) Certificate of Disability Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office will provide a completed form.

3) CE-200-Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. DASNY will *not* accept this as an exemption from providing Workers' Compensation Insurance) The Certificate may be obtained from the NYS Workers Compensation Board's website at http://www.wcb.ny.gov/content/main/Forms.jsp. The CE-200 cannot be used for multiple projects. Therefore, a new form must be completed prior to award of any subsequent contracts. All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

2. **Commercial General Liability** which includes the entities Dormitory Authority State of New York and the State of New York with per-occurrence and aggregate limits of not less than Two Million Dollars ($2,000,000). The limits may be provided through a

combination of primary and umbrella/excess liability policies. The Proposer shall list any deductible or SIR (Self-Insured Retention) and provide a copy of the endorsement.

Coverage shall include, but not be limited to, Blanket contractual liability and Completed Operations coverage for a term of no less than three (3) years.

3. **Commercial Comprehensive Automobile Liability and Property Damage** covering all owned, leased, hired and non-owned vehicles used in connection with the Work with combined single limits of not less than One Million Dollars ($1,000,000.00) each person/each accident for bodily injury and property damage.

4. **Umbrella and/or Excess Liability policies** used to comply with CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability.

5. **Technical Errors and Omissions/Professional Liability Insurance and Cyber Risk Insurance** with a limit of not less than One Million Dollars ($1,000,000) and subject to a deductible, or self-insured retention, of not more than One Hundred Thousand Dollars ($100,000.00) per claim. Such policy(ies) shall include the Dormitory Authority – State of New York and the State of New York as Additional Insured with respect to claims brought by third parties in connection with work performed by the Proposer. Such policy(ies) shall also remove any exclusion that restricts or eliminates coverage for claims brought by DASNY against the Proposer that would otherwise be covered by the policy. The cyber risk policy shall provide coverage for any incremental costs incurred by DASNY to investigate and remediate any data breach that may have exposed DASNY's data. The policy should provide third party coverage for both DASNY and our clients.

A Certificate of Insurance, indicating the Program, must be submitted, and approved by DASNY prior to the commencement of work. Certificate shall provide 30 days' written notice prior to the cancellation, non-renewal, or material modification of any policy. Upon request, the Proposer shall furnish DASNY with certified copies of each policy.

33. Force Majeure

33.1   In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing obligations under this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances (other than within Vendor), passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, pandemic or epidemic, quarantine, or national or regional shortage of adequate power or telecommunications or transportation. Customer may terminate this Agreement if a Force Majeure Event

continues substantially uninterrupted for a period of thirty (30) days or more. For the avoidance of doubt, if an event or condition constitutes a Force Majeure Event and is an event or condition subject to Vendor's disaster recovery plan and/or its business continuity plan, it shall not be considered a Force Majeure Event with respect to Vendor, as the terms of the disaster recovery plan and/or the business continuity plan shall govern, except to the extent, the performance of the disaster recovery plan and/or the business continuity plan is prevented by the Force Majeure Event.

33.2   In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

34.   Notice

Any notice or other communication under this Agreement given by a Party to the other Party will be in writing and will be effective upon delivery as follows: (a) if to Customer to the [DASNY to provide] (or to such other addresses or addressees as Customer may designate as to itself by notice to Vendor): (i) when delivered via registered or certified mail, return receipt requested; (ii) when delivered by Express Mail, Federal Express or other acceptable express delivery service (receipt requested); or (iii) when sent via email to the email address [_____], if a copy is also sent as specified in (i) or (ii) above; and (b) if to Vendor, when sent via email to [_____], with a duplicate copy sent via registered or certified mail, return receipt requested, or Express Mail, Federal Express or other acceptable express delivery service (receipt requested) to: [_____](or to such other addresses or addressees as a Party may designate as to itself by notice to the other Party). Any such notice, in either case, must specifically reference that it is a notice given under this Agreement.

35.   Section 365(n)

The Parties intend that all licenses granted herein are for purposes of Section 365(n) of the U.S. VENDOR bankruptcy Code, Title 11, U.S.C. ("**VENDOR bankruptcy Code**"), licenses of rights to "intellectual property," as that term is defined in Section 101 of the VENDOR bankruptcy Code. Nothing in this Agreement limits either Party's rights under Section 365(n) of the VENDOR bankruptcy Code. Neither Party is in this Agreement making an election under Section 365(n) of the VENDOR bankruptcy Code.

36.   Survival

Following the termination of this Agreement, the Parties shall remain obligated under all provisions of this Agreement which by their terms continue after the termination of this Agreement or are incidental to the performance of the obligations under such provisions, which shall include **Sections 1 (**Definitions), **8** (Customer Data and User Data), **9** (Return of Customer Data), **17** (Confidentiality), **21** (Disclaimer of Warranties), **22** (Indemnification), **25** (Term and Termination), **26** (Termination for Cause), through **28** (Fees and Payment) Inclusive, **31** (Limitations of Liability), **32** (Insurance; for the period set forth therein), **34** (Notice); **35** (Section 365(n)), **36** (Survival) and **37** (General Provisions).

37.   General Provisions

37.1   <u>Audit</u>. Vendor shall maintain and shall keep for a period of six (6) years after the date of the termination or expiration hereof, all records and other data relating to the Agreement. Customer or Customer's Representatives shall have the right to inspect and audit all records and other data of Vendor

relating to the Agreement. Any payment otherwise due that is not supported due to the unavailability of said records shall, at the discretion of DASNY, be disallowed. If payment has already been made, amounts disallowed shall be refunded by Vendor to the Customer upon demand.

37.2   <u>Time of is of the Essence</u>. Vendor acknowledges and agrees that time is of the essence with respect to its obligations under this Agreement.

37.3   <u>Interpretation</u>. For purposes of this Agreement: (a) the words "include," "includes" and "including "are deemed to be followed by the words "without limitation;" (b) the word "or" is not exclusive; (c) the words "hereof," "hereby," hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (f) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (g) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (h) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement and are incorporated as if fully set forth herein.

37.4   <u>Headings</u>. The headings are not part of this Agreement are included for reference only. They do not affect the interpretation of this Agreement.

37.5   <u>Customer-Vendor Relationship</u>. The relationship created by this Agreement between Customer and Vendor is one of independent contractor and it is in no way to be construed as creating any agency relationship between Customer and Vendor nor is it to be construed as, in any way or under any circumstances, creating or appointing Vendor as an agent of Customer for any purpose whatsoever.

37.6   <u>NYS Vendor Responsibility Questionnaire</u>: Pursuant to Executive Order No. 170.1   Uniform Guidelines for Responsibility Determinations, Executive Order No. 125   NYS Vendor Responsibility Questionnaire and Executive Order No. 192   Continuing Vendor Integrity, DASNY may only award a contract to a responsible proposer. A responsible proposer must have the integrity to justify the award of public dollars and the capacity to perform the requirements of the contract fully. The proposer must file a vendor responsibility questionnaire with DASNY. The questionnaire provides the proposer an opportunity to self-disclose any issues and provide necessary information, which DASNY will use as part of its determination.

Complete the NYS Vendor Responsibility Questionnaire online at <u>http://www.osc.state.ny.us/vendrep</u> and submit a copy of the certification page.

37.7   <u>Entire Agreement</u>. This Agreement, together with any other documents and Law incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments and appendices (other than an exception expressly set forth as such

therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the exhibits, schedules, attachments and appendices to this Agreement; (c) third, the RFP and the Vendor RFP Proposal taken together; and (d) fourth, the RFQ and the SOQ taken together (and other documents incorporated herein by reference into any of the foregoing), except to the extent that any of the foregoing expressly provide that a provision will govern in the event of a conflict with one or more of the documents referenced in this Section.

37.8   Assignment. Vendor may not assign any of its rights or obligations hereunder, whether by operation of Law or otherwise, without the Customer's express, prior written consent. Notwithstanding the foregoing, if Vendor is acquired, sells substantially all of its assets, or undergoes a change of control, then Customer may terminate this Agreement upon written notice to Vendor. In the event of such a termination, Vendor will provide Transition Services. Vendor will refund to Customer the balance of any prepaid amount. Any purported assignment, delegation or transfer in violation of this is void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns. Customer may assign this agreement without the approval of Vendor.

37.9   False Statements/Information.

(a)   False statements, information or data submitted on or with applications for payment may result in one or more of the following actions:

(i)   Termination of the Agreement
(ii)   Disapproval of future Agreements and sub-Agreements
(iii)   Withholding of final payment on the Agreement
(iv)   Civil and/or criminal prosecution.

(b)   These provisions are solely for the benefit of Customer, and any action or non-action hereunder by Customer shall not give rise to any liability on the part of Customer.

37.10   No Third-party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

37.11   Amendment and Modification; Waiver. The Parties agree that this Agreement is not and shall not be amended or otherwise modified by any provision of, or use of, any website, or otherwise by any electronic or online agreement or electronic email, and any Vendor form of "terms of service," "terms of use", "end user license agreement," "privacy policy" or the like that are otherwise generally applicable to persons who use the services (including Services) shall not be applicable to, or have any force and effect upon, Customer or any of its Users, regardless of its terms. It may be amended only by a tangible writing, setting out the specific modification(s) signed by all Parties expressly stating that it is an amendment of this Agreement, and executed and delivered in accordance with the provisions of this Agreement. An original handwritten signature meeting the requirements in the preceding sentence and transmitted by facsimile (including "pdf" by email) shall be considered a handwritten signature for purposes of the Agreement. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof;

nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

37.12   Agreement Deemed Executory. Vendor agrees that the Agreement shall be deemed executory to the extent of moneys made available for payment hereunder from whatever source other than Customer specifically for this Agreement and no liability shall be incurred by Customer beyond moneys available, therefore.

37.13   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the Laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York located in Albany County, New York and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by certified or registered to such Party's address set forth in **Section 34** (Attention General Counsel if sent to Customer, and Attention [insert] if sent to Vendor), or to such other address or addressee as a Party may designate as to itself by notice to the other Party, shall be effective service of process for any suit, action or other proceeding brought in any such court.

37.14   Compliance with Laws. Each and every provision and clause required by Law to be inserted and incorporated into this Agreement shall be deemed inserted and incorporated in this Agreement as if fully set forth herein, and this Agreement shall be construed and shall be enforced as though so inserted and incorporated. Vendor shall comply fully with all applicable Laws, rules and regulations.

37.15   Waiver of Jury Trial. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

37.16   Prohibited Interests/Ethical Conduct.

(a)   Officers and employees of Customer are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, consultant, attorney or consultant of or for Customer authorized on behalf of Customer to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Agreement or the Services, shall become personally interested, directly or indirectly, in the Agreement, material supply contract, subcontract, insurance contract, or any other Agreement pertaining to the Agreement.

(b)   Section 73(5) of the *Public Officers Law* expressly prohibits Vendor, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of Customer under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.

In addition to the prohibition of Section 73 (5) of the *Public Officers Law*, Customer has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore,

Vendor and its agents should refrain from offering or giving anything of value to an employee of Customer. Employees of DASNY may not solicit any gift, gratuity, stipend or thing of value from Vendor or its agents. Violations of these gift provisions may be grounds for immediate Agreement termination and/or referral for civil action or criminal prosecution.

(c)   To promote a working relationship with Customer based on ethical business practices, Vendor shall:

(i)   furnish all goods, materials, and services to Customer as contractually required and specified,

(ii)   submit complete and accurate reports to Customer and its agents as required,

(iii)   not seek, solicit, demand or accept any information, verbal or written, from Customer or its agents that provides an unfair advantage over a competitor,

(iv)   not engage in any activity or course of conduct that restricts open and fair competition on Customer -related contracts and transactions,

(v)   not engage in any course of conduct with Customer employees or its agents that constitutes a conflict of interest, in fact or in appearance, and

(vi)   not offer or give any unlawful gifts or gratuities or engage in bribery or other criminal activity.

(d)   Customer encourages Vendor to advance and support ethical business conduct and practices among its directors, officers, and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.

(e)   Vendor agrees to notify the Customer's Office of Internal Affairs at 518-257-3193 of any activity by an employee of Customer that is inconsistent with the contents of this Section.

(f)   Any violation of these provisions shall justify termination of this Agreement and may result in Customer's rejection of Vendor's bids or proposals for future contracts.

(g)   Vendor shall at all times during the Agreement Term remain responsible. Vendor agrees, if requested by the President of Customer or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(h)   The President of Customer or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of Vendor. In the event of such suspension, Vendor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Vendor must comply with the terms of the suspension order. Agreement activity may resume at such time as the President of Customer or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

(i)   Notwithstanding any other provision of this Agreement, upon written notice to Vendor, and a reasonable opportunity to be heard with the appropriate Customer officials or staff, the Agreement may be terminated by the President of Customer or his or her designee at Vendor's expense where Vendor is determined by the President of Customer or his or her designee to be non-responsible.

In such event, the President of Customer or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

(j)   By entering into this Agreement, Vendor certifies, under the penalties of perjury, that Vendor is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. Vendor further certifies that Vendor will not utilize on this Agreement any person that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

(k)   During this Agreement, should Customer receive information that a person (as defined in New York State Finance Law §165-a) is in violation of the above-referenced certifications, Customer will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within ninety (90) days after the determination of such violation, then Customer shall take such action as may be appropriate and provided for by Law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring Vendor in default.

37.17   Cooperation with Investigations. Vendor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Office of Internal Affairs ("**OIA**") of the Customer or any other duly authorized Representative of Customer ("**Customer Representative**"). Vendor shall grant the OIA or the Customer Representative the right to examine all books, records, files, accounts, computer records, documents, and correspondence, including electronically-stored information, in the possession or control of Vendor, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by Vendor, relating to Vendor. These shall include, but not be limited to: payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; amendment estimate files; detailed worksheets; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; tax returns, and the supporting documentation for the aforesaid books and records.   At the OIA's or the Customer Representative's request, said materials shall be provided in a computer readable format, where available.   At the request of the OIA or the Customer Representative, Vendor shall execute such documents, if any, as are necessary to give the OIA or the Customer Representative access to contract-related books, documents or records which are, in whole or part, under control of the Vendor but not currently in Vendor's physical possession. Vendor shall assist the OIA or the Customer Representative in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by Vendor, for purposes of the Agreement. Any violation of the provisions of this Article shall justify termination of this Agreement and may result in Customer's rejection of the Vendor's bids or proposals for future contracts.

37.18   Invalid Provisions. If any term or provision of this Agreement or the application thereof to any person, firm or corporation, or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons, firms or corporations, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

37.19   Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of

this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

37.20   2005 Procurement Lobbying Law.

(a)   Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of an agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

(b)   At Customer's request, Vendor shall submit *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139–j and § 139–k*. The information contained in *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139–j and § 139–k* will serve as an informational resource to aid Customer in identifying permissible contacts regarding this procurement.

(c)   Customer reserves the right to terminate this Agreement in the event it is found that the certification filed by Vendor in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, Customer may exercise its termination right, such termination constituting a termination for cause, by providing written notification to Vendor in accordance with the Termination for Cause **Section 26** of the agreement.

37.21   Compliance with Breach Notification and Data Security Laws: The Vendor shall comply with the applicable provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

If the Vendor learns of any actual or attempted unauthorized access to Information that would require notification under applicable Law relating to a Vendor data breach, the Vendor will (1) promptly notify DASNY of all details known to the Vendor and regularly supplement the same with new information as it is discovered; (2) bear responsibility for the costs of providing notice and identity protection services for a period of 12 months to individuals affected by the breach, and (3) at its cost, assist DASNY in its obligation under applicable Law.

IN WITNESS WHEREOF, the Parties have entered into this Agreement by their respective authorized representatives.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK　　**[VENDOR]**

By: _____　　**By:** _____
Signature and Date　　**Signature and Date**

Print Name and Title　　**Print Name and Title**

NOTARY PUBLIC　　**NOTARY PUBLIC**

Signature and Date　　**Signature and Date**

SCHEDULE 2.1
VENDOR INVESTMENT SYSTEM SOLUTION

[insert from SOQ and Vendor RFP Response]

SCHEDULE 2.2
IMPLEMENTATION AND GO-LIVE REQUIREMENTS

[insert Milestones, Acceptance Criteria, Acceptance Test, etc.]

SCHEDULE 2.3
RFP

[include]

SCHEDULE 2.4
VENDOR SYSTEM SLAS

[insert]

SCHEDULE 2.5
ADDITIONAL SERVICES

1.   From time to time, Customer may require services in addition to those set forth in this and the other Schedules to the Agreement ("**Additional Services**"). Customer will ask Vendor for a proposal therefor. Upon mutual agreement of the scope of such Additional Services, the Parties will enter into an SOW. If Vendor notifies Customer in writing of Vendor's conclusion that the services sought are outside of the scope of the Agreement, and Customer notifies Vendor in writing that it so agrees, Customer will pay Vendor according to one of the following methods:

      (1)   Negotiated Lump Sum Payment agreed upon by the Parties; and/or

      (2)   Vendor's actual cost of providing the services or supplements of any kind. Actual Cost shall be calculated at hourly rates as listed in **Appendix A** for specific Vendor position titles, entitled Schedule of Technical Classifications and Hourly Rates attached as **Appendix A**. Actual costs exclude, and Customer, will not pay for clerical, typing, or stenographic assistance or similar back-office services and operations; or

      (3)   Pursuant to a SOW.

IN NO CASE, SHALL CUSTOMER PAY VENDOR'S SENIOR EXECUTIVES AT AN HOURLY OR TIME AND MATERIALS RATE OR OTHERWISE FOR ANY WORK PERFORMED BY ANY OF THEM AS NECESSARY FOR THE SUCCESSFUL DELIVERY OF THE SERVICES.

APPENDIX A
SCHEDULE OF VENDOR EMPLOYEE CATEGORIES AND HOURLY RATES

[TO BE INSERTED IF APPLICABLE]

SCHEDULE 2.6
REQUIRED HARDWARE AND SOFTWARE

[To be inserted]

SCHEDULE 2.7
OVERVIEW OF VENDOR TECHNICAL ARCHITECTURE

[to be inserted]

SCHEDULE 2.8
VENDOR SERVICES FEES

[include if any]

SCHEDULE 2.9
VENDOR'S SECURITY SERVICES

2.   Purpose. Without limiting Vendor's security obligations pursuant to **Section 13** of the Agreement, and the confidentiality and nondisclosure obligations set forth in **Section 17** of the Agreement, this Security Schedule sets forth the information security program and infrastructure policies that Vendor shall meet and maintain in order to protect Customer Data from unauthorized use, access, or disclosure. Information Security Management Program. Vendor represents, warrants and covenants that it shall maintain throughout the Term of the Agreement a written information security management program ("**ISMP**") designed to protect and secure Customer Data from unauthorized access, use or disclosure. The ISMP will be documented and updated based on changes in applicable legal and regulatory requirements related to privacy and data security practices and industry standards.

3.   Standards. Vendor shall incorporate commercially reasonable and appropriate methods and safeguards to protect the security, confidentiality, and availability of Customer Data. Vendor shall, at a minimum, adhere to applicable information security practices as identified in ISO 27001 and ISO 27017 (or a substantially equivalent or replacement standard) or other authoritative sources (e.g. SSAE 18 or SOC2). Vendor's Security Services shall include, without limitation, the security features as set forth in herein, or with the approval in writing of Customer, features substantially similar to thereto.

4.   Information Security Policies. Vendor shall implement, maintain, and adhere to its internal information security and privacy policies satisfactory to Customer that address the roles and responsibilities of Vendor's Representatives, including both its technical and non-technical Representatives, who have direct or indirect access to Customer Data. Vendor shall follow the principal of least privilege. Each Vendor Representative with access to Customer Data shall receive annual training on Vendor's ISMP and demonstrate his/her ability to comply with the Security Services requirements applicable to such Representative's services.

5.   Information Security Infrastructure.

        5.1   Access Controls. Vendor shall ensure access controls satisfying the requirements hereof are in place and operational as required to so protect Customer Data against unauthorized access, use and disclosure. Vendor shall maintain throughout the Term and at all times while Vendor has access to or possession of Customer Data, physical, technical, and administrative access controls, and shall maintain such controls in accordance with Vendor's policies and procedures in a manner required hereunder and in accordance with the terms of the Agreement.

        5.2   Authorized Persons. Vendor shall limit access to Customer Data solely to Vendor Representatives who have a need to access the Customer Data in connection with the provision of the Vendor System or as otherwise required by applicable Law, and will limit such access in each case to the extent necessary to perform the Services.

        5.3   Access Justification/Authorization Process. Vendor shall maintain a process in place that ensures that only authorized Vendor technical and non-technical Representatives are granted access to Customer Data.

        5.4   Encryption. Vendor shall encrypt Customer Data at rest within the Vendor System. Vendor shall use at a minimum AES algorithm for encryption of Customer Data at rest with a default value of 256-bit strength and otherwise in compliance with the Customer's security requirements.

Without limiting its obligation pursuant to **Section 13** of the Agreement, Customer Data in transit to and from the Vendor System shall be via encrypted networks (HTTPS and/or VPN). Backups of Customer Data shall be encrypted at the foregoing level and retained within a secondary data center(s) of the Hosting Vendor and Vendor.

5.5   Network and Host Security. Vendor shall utilize an enterprise-class security information and event management (SIEM) system that has firewalls in place. Vendor shall use industry standard practice to ensure that the Vendor System operating systems and applications that are associated with Customer Data are patched and secured as required to protect against security vulnerabilities in accordance with Vendor's patch management processes and Vendor shall have immediate actual or constructive knowledge of any critical or high-risk security vulnerabilities. Vendor shall conduct vulnerability scanning on a weekly basis.

5.6   Data Management. Vendor shall have in place and maintain information security infrastructure controls for Customer Data that is obtained, transported, and/or retained by Vendor. Vendor shall destroy, delete, or otherwise make irrecoverable Customer Data upon the disposal or repurposing of storage media containing Customer Data in accordance with the Agreement. No Customer Data shall remain on or in any storage media that is repurposed. Customer Data shall be logically separated from the content and data of other Vendor customers.

5.7   Physical Security. Physical security safeguards shall include physical safety and security safeguards at any facilities where Vendor hosts Customer Data sufficient to meet the requirement set forth herein. Any such facilities that Vendor utilizes for Customer Data shall be a Tier 3 data center or greater or equivalent.

Notwithstanding the foregoing, Customer understands and acknowledges that Customer shall be solely responsible for implementing and maintaining access and security controls on the Customer systems, except to the extent of interference by Vendor or the Vendor System.

6.   Independent Assessments. Without limiting compliance with the other security requirements hereunder, on an annual basis, Vendor shall use an independent qualified third party organization to conduct an independent assessment of the standards set forth in this Schedule and Vendor shall promptly make all changes recommended by such party. Additionally, Vendor shall undergo regular penetration testing (on an annual basis), which shall be conducted by an independent third-party organization.

7.   Security Features. Vendor shall implement and maintain two-factor authentication satisfactory to Customer.

8.   Security Breach Management.

8.1   Notice. Vendor shall promptly notify Customer of any suspected or confirmed Security Breach. Vendor shall provide information requested by Customer with respect to any Security Breach. Without the necessity of any Customer request, Vendor shall provide regular updates every two (2) hours on the status of a suspected or confirmed Security Breach and the investigative action and corrective action taken or planned. "**Security Breach**" means unauthorized access to Customer Data or the Vendor Systems.

8.2   Remediation. Without limiting the foregoing, Vendor shall, at its own expense, (i) investigate the actual or suspected Security Breach, (ii) provide Customer with a remediation plan to address the Security Breach and to mitigate the incident and to prevent any further incidents of the same nature to the extent possible using available technology, (iii) remediate the effects of the Security Breach in accordance with such remediation plan and as otherwise reasonably required by Customer, and (iv) cooperate with Customer (including, but not limited to, providing audit logs) and any law enforcement or regulatory official investigating such Security Breach.

9.   Additional Security

9.1   Security: Vendor shall ensure that the following meet password security requirements:

(1)   Configurable attributes which Customer can specify in Vendor instances

(a)   User Roles and Profiles
(b)   Session expiration
(c)   Password character Length
(d)   Prevent Password to contain/match the login ID
(e)   Repeated character maximum
(f)   Number of failed password attempts before account lockout
(g)   Account lockout duration
(h)   Previous password cannot be used within a set number of changes
(i)   Character type requirements
(j)   Single sign-on

9.2   Without limiting other security requirements, Vendor shall provide the following Vendor System protections:

(a)   Hosting Vendor security – [ELB] shall protect against DDOS, secured data centers, latest hardened configurations
(b)   Restricted access to Hosting Vendor resources (operations and engineering team only)
(c)   Logging, audit trails, and alerting
(d)   TLS 1.2 and higher encryption
(e)   SDLC with code reviews and automated tests
(f)   Backup and recovery
(g)   Annual external penetration test using [_____]
(h)   SSAE SOC 1 provided to Customer on the anniversary of the Effective Date during Term and at other times as DASNY requires to meet requirements imposed on or requests made to it.

10.   Overview of Vendor Technical Architecture and Security. The Vendor System shall be hosted within the Hosting Service and as further discussed below, using the Hosting Vendor's managed services, numerous availability zones, and independent operational regions. This shall allow Vendor to achieve a high resilience to hardware failures and geographic disasters. Vendor's Hosting Services deployment shall take advantage of synchronous data replication between data centers (availability zones), which shall allow Vendor to bring the Vendor System back into production-level operation quickly in the event of a failure within the primary data center hosting. To the extent of a conflict between this Schedule and **Schedule 2.10**, the provisions most protective of Customer will govern.

11. <u>Certifications and Existing Compliance around the Data Center</u>. The Hosting Vendor shall have and maintains ISO 27001 certification and publish SOC 1 Type 2 and SOC 2 reports. Vendor shall provide these to Customer on the anniversary of the Effective Date during the Term and at other times as Customer requires for meeting requirements imposed on or requests made to it. Vendor shall cause the Hosting Vendor to meet physical security of hardware and networking as required hereunder. The Hosting Vendor shall enable Vendor to create and manage the following and Vendor shall do so in accordance with the security requirements:

> 11.1   Security policies, standards, guidelines and procedures
> 11.2   Formal security governance
> 11.3   Formal risk management and risk assessment processes
> 11.4   Security vetting with logical and/or physical access to data
> 11.5   A systems accreditation and certification process
> 11.6   Incident monitoring and reporting
> 11.7   Platform configuration and maintenance
> 11.8   Software applications use and access
> 11.9   Restricted physical access to data facilities
> 11.10   Backup and restore processes
> 11.11   Business continuity and disaster recovery planning
> 11.12   Data archiving/retention and disposal processes

12. <u>Maintenance of Firewall Security</u>. No application servers (i.e., virtual machines) shall store any persistent data. They shall be provisioned and configured by software and shall enable ready replacement without causing any degradation of Availability. All systems shall reside behind a firewall that exposes only the user-accessible portion of the Vendor System to the Internet. All communication with the application shall be TLS or stronger encryption. Credentials shall be stored as salted cryptographic digests. All operational access to the Vendor System and the underlying IT infrastructure shall be restricted by a firewall to authorized users and by using two-factor authentication.

13. <u>Intrusion Detection Systems</u>. The Hosting Vendor shall use a wide variety of automated monitoring systems to provide a high level of performance and availability for the Vendor System to Customer. Hosting Vendor monitoring tools shall be designed to detect unusual or unauthorized activities and conditions at ingress and egress communication points. These tools shall monitor server and network usage, port scanning activities, application usage, and unauthorized intrusion attempts. The tools shall have the ability to set custom performance metrics thresholds for unusual activity. Such thresholds shall be established from time to time subject to Customer approval, which shall not be unreasonably withheld.

14. <u>Web Security Methods and Web Security Sessions Enabled</u>. The Hosting Services shall provide a number of mechanisms to secure Customer Data database instances:

14.1   Hosting Vendor shall include web service interfaces to configure firewall settings that control network access to the Customer Data database. .

14.2   Vendor through the Hosting Service shall operate the Customer Data database instances in [_____].

15.   Physical Security Features of Data Center. Hosting Vendor data centers shall be housed in nondescript facilities, and critical facilities shall have extensive setback and military grade perimeter control berms as well as other natural boundary protection. Physical access shall be strictly controlled both at the perimeter and at building ingress points by professional security staff utilizing video surveillance, state of the art intrusion detection systems, and other electronic means.

16.   Integrations and API Availability. Vendor has and shall have the ability to pull in data feeds using REST APIs, as well as integrate with other REST services from third party applications and integrations such as accounting systems, using a two-way synchronous API. Vendor's API shall also have the ability to pull in data feeds from third party applications, CRMs, and integrations via JSON, RSS or compatible approach. Vendor shall use this functionality and technology as required to provide the Vendor System and Services as required pursuant to the Agreement.

SCHEDULE 2.10
HOSTING SERVICES

[To be inserted]

SCHEDULE 2.11
MAINTENANCE AND SUPPORT SERVICES

1.   Vendor shall provide Maintenance and Support Services using Vendor's specialized Support Representative(s) (also referred to as the "**Support Team**") which Representatives shall have appropriate expertise to provide prompt resolution of technical support questions.   If Customer reasonably determines that a Vendor Support Representative is not performing satisfactorily, the Parties will attempt to remediate the shortfalls, and if Customer requests, Vendor will designate a new Support Representative acceptable to Customer, which acceptance will not be unreasonably withheld.

        1.1   Maintenance and Support Services shall include access to the Vendor Support Team (via [_email/web_____].

        1.2   A Customer or User request for Maintenance and Support Services shall be referred to as a "**Ticket**." Any ticket received Monday through Friday, 6:00 am to 5:00 pm (PST) will be viewed in real-time and assessed for urgency and assigned to the correct Vendor Support Representative(s) for timely resolution. Tickets marked by Customer or User as "urgent" or "priority" will be reviewed and triaged as soon as possible. If the Level 1 Support Team cannot close the Ticket by resolving the associated issues, the Ticket will be escalated to the Support Team lead who will cause the Vendor Project and/or Product/Engineering teams to resolve the issue subject to the Ticket. The Support Team will communicate with the Customer regularly to provide any updates to (or answer questions about) the escalated issue.

        1.3   The Parties may jointly determine that an issue requires escalation to the Vendor Development Team. Due to the complexity of issues that are normally worked on by Development Team, resolution time guidelines that the Support Team follows do not necessarily apply upon escalation to the Development Team, although the Development Team shall work to resolve the Ticket expeditiously.

        1.4   For each Ticket, the Support Team shall conduct an initial evaluation of the described issue, including attempting to reproduce the issue and confirming Customer settings and configuration. If required, the Support Team will timely ask Customer additional questions to help identify issues. If the issue is determined to be a Vendor software bug, the Ticket will be escalated to the Vendor Development Team. Otherwise, the Support Team will provide Customer with the solution.

        1.5   For Tickets submitted, Vendor shall meet the following as set forth below:

        (1)   Priority 1: Significant lack of Availability of Vendor System or global impairment in critical aspects of the Services or Processing which prevent Customer or a User from materially using the Vendor System (1 hour response with 24-hour resolution time).
        (2)   Priority 2: Issues that materially affect Processing in circumstances where the Vendor System is working, but where specific components are generating errors and/or not responding in a timely manner (4-hour response with 15-day resolution time).
        (3)   Priority 3: Issues that moderately affect Processing or moderate impairment of material aspects of the Services or its Processing capabilities (48 business hour response with resolution time as defined by Vendor, but within a commercially reasonable time given the importance of the issue).

(4)   Priority 4: An issue with a low degree of impairment of the Services (48 business hour response with resolution time as defined by Vendor, but within a commercially reasonable time given the importance of the issue).

2.   <u>Advanced Support Services</u>. Advanced Support Services are optional services, which include advanced configuration (configuration that requires integration, analysis, build and testing), individual training, and custom development, and which can be requested, scoped and managed under an SOW. Vendor's Support Team is the point of contact for Vendor for any issues and feature requests or enhancements from custom development and/or configuration.

SCHEDULE 2.12
VENDOR BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

1.   Summary

        1.1   Business Continuity/Disaster Recovery. Vendor shall implement and maintain a business continuity plan that is compliant with ISO 22301. Vendor shall provide documents certifying its compliance on or about the anniversary of the Effective Date each year during the Term. Vendor shall implement and maintain disaster recovery capabilities as further provided herein.

        1.1   Vendor's disaster recovery plan and business continuity plan are built using Hosting Vendor's features and functionality using procedures and controls in order to prepare for, manage, and recover from a disaster or emergency affecting the provision of the Services to Customer.

        1.2   RTO. The Recovery Time Objective (RTO) for the Vendor System is 4 hours.

        1.3   RPO. The Recovery Point Objective (RPO) for the Vendor System is 4 hours.

        1.4   [Insert details on Hosting Services Infrastructure and locations.]

        1.5   Archive and Backup Process, Procedures, and Guidelines. Customer Data stored in the Hosting Service shall be redundantly stored in multiple physical locations in the United States of America as a normal part of the Hosting Vendor–provided services and at no additional charge. Customer Data that is maintained within running instances on the Hosting Service does not and shall not require the Hosting Vendor to perform backups in order for Vendor to provide Customer Data to Customer from other backup databases. Customer Data shall be stored and configured to synchronously replicate to a secondary Hosting Vendor United States data center that shall automatically failover to a United States data center in the event of a primary data center outage or server failure. Vendor will create or cause the Hosting Vendor to create backup Customer Database backups that shall provide at least a thirty (30) day point in time recovery. Vendor shall retain or cause the Hosting Vendor to retain weekly snapshots for at least twelve (12) months.

        1.6   Disaster Recovery Plan. Without limiting Vendor's other obligations with respect to disaster recovery and business continuity, Vendor shall use Hosting Vendor's managed services, numerous independent availability zones (data centers), and multiple geographic regions and all in the United States of America to provide the Services including as required hereunder.

        1.7   Vendor shall maintain processes in place to ensure automatic application of Customer Data database failover. It shall run Customer instances of the Vendor System in at least two (2) availability zones, so Vendor can provide access to a complete and active instance even if an entire Hosting Vendor availability zone were to become unresponsive. All instances shall be placed behind an elastic load balancer, which shall periodically check the health of each instance (via a configurable TCP port). If an instance fails, the load balancer shall automatically stop routing traffic to that instance and notify Vendor. The load balancer will only begin using an instance again after it passes a configurable number of subsequent health checks to the satisfaction of Vendor as required for Vendor to meet the requirements hereof.

2.   Guaranteed Redundancy

2.1   Hosting Vendor shall use multiple features that enhance reliability for critical production Customer Data databases, including automated backups, DB snapshots, automatic host replacement, and Multi-AZ deployments. Hosting Vendor shall allow Vendor to provision new servers within any region quickly in the event of failure. The relational database ("**RDS**") shall be configured for hot failover. In the event of long-term or permanent regional failure (i.e. widespread catastrophe) in which both primary and secondary are lost, Vendor shall have the latest weekly SQL-based backup stored within the [_____] region to continue providing Services in accordance with the requirements hereof.

2.2   Redundancy in Architecture. For the avoidance of doubt, Vendor will use only Hosting Vendor facilities in the United States of America. Vendor shall have the ability to provision new servers within any region within the United States of America quickly in the event of failure at a Hosting Vendor site used for Vendor System for Customer.

3.   Archive and Backup Process, Procedures, and Guidelines

3.1   Vendor will store Customer Data in the Hosting Service on a redundant basis in multiple physical locations as a normal part of services provided by the Hosting Vendor and at no additional charge. Customer Data shall be stored and configured to synchronously replicate to a secondary data center that will automatically failover in the event of a primary data center outage or server failure. Backups shall provide thirty (30) days of point-in-time recovery and weekly snapshots shall be retained for twelve (12) months.

3.2   Vendor shall offer multiple levels of information security to protect Customer Data. The only way to access Customer data shall be via Vendor System interface, which restricts access to only Users authorized by Customer through the use of Credentials. Vendor shall prevent persons from whom Credentials have been withdrawn from accessing any Customer Data or the Vendor System.   All Credential passwords stored in the Vendor database shall be secured with a one-way hash and custom salt. Administrators shall further limit access to Customer Data by using distinct profiles (which limit what a User can see) and roles (which limit what a User can do). If requested by Customer, more granular controls – such as access to specific fields or specific data types – shall be implemented by role through the use of permissions/rights.

3.3   In addition to using the above features of the Hosting Service, Vendor will also take a nightly snapshot of the entire Customer Data database and store this in Vendor-operated servers in the United States of America.

4.   Disaster Recovery Plan

4.1   The Vendor disaster recovery plan shall use Hosting Vendor managed services, numerous independent availability zones (data centers), and multiple geographic regions. Vendor shall have the capability to and shall quickly recover from server failures and data center outages and maintain the operation of the Vendor System. Customer Data shall be stored in the Hosting Services managed database service (RDS) and configured to synchronously replicate to a secondary data center that will automatically failover in the event of a primary data center outage or server failure. Backups will be made that provide thirty (30) days of point-in-time recovery and weekly snapshots shall be retained for twelve (12) months. In the event of an emergency, Vendor will perform a point-in-time restore from any

database state in the last thirty (30) days, up to five (5) minutes before the current time for the transactions.

4.2   Testing Backup Recovery:

(a)   Vendor shall conduct test scenarios for disaster and backup recovery no less than annually.

(b)   The Vendor System Administration team shall create the environment to load off-site backups and then recreate the Customer site instances based solely on those off-site backups.

(c)   A disaster for specific Customer website(s) shall be declared by Vendor upon receiving notification from the Hosting Vendor whereupon Vendor will perform its obligations under its disaster recovery plan.

5.   If Customer considers an event to be a disaster, it shall be able to immediately begin communicating with the appropriate Vendor Representatives to invoke the Vendor disaster recovery by sending an email [_____]. Vendor will respond immediately, and Vendor will begin necessary disaster recovery plan actions on its own even before speaking or communicating with Customer.

SCHEDULE 2.13
TRAINING

1.   Vendor will train Customer to enable Customer to fully adopt and use the Vendor System. Such training shall incorporate the needs of Customer. Customer will provide Vendor with such needs in writing.

2.   <u>Customer Administrator Training</u>

        2.1   Vendor will provide two (2) days (scheduled by Customer in consultation with Vendor) of training for up to three (3) Customer employees designated by Customer. This training module will include training in the use of the Vendor System features and technical operations. The training will include the following:

> (a)   How to modify applications and workflows
> (b)   Record managements, fields, attributes and values
> (c)   Letters and templates
> (d)   Emails and alerts configuration
> (e)   Dashboard Management
> (f)   Reporting: Dashboards/Filtered Cards, Ad-hoc documents, Excel Add-In
> (g)   Training Materials shall include reference manuals, a system configuration guide and a comprehensive FAQ and other materials reasonably requested by Customer upon agreement of Vendor.

3.   <u>Train-the-Trainer Training</u>

> (1)   Vendor will create and provide training material (including PowerPoints) customized for the configuration of the Vendor System for Customer. The training will include the following:
>
> (a)   Accessing the Vendor System including the use and operation of the Portal
> (b)   Anatomy: Dashboards – Layout, Cards, Table View, Connected Data
> (c)   Action Bar: Views, Exporting, Filtering
> (d)   Accessing Customer Data: Search, Dashboards, Sharing, Favorites, Dynamic Cards
> (e)   Organization schema and roles and operations of and for Users, and issue of Credentials to Users
> (f)   Vendor System Workflow: Steps in investment management
> (g)   Documents, Notes & History
> (h)   Accessing Vendor Reports: Excel Reports, Ad-Hoc Reports, Live Reports

4.   <u>Vendor training in the use of</u>:

> (a)   The Vendor Knowledge base accessible at https://[_____]
> (b)   Vendor online community accessible at http:// [_____]
> (c)   Training and Webinars accessible at https:// [_____]

        4.1   Vendor will support training to be provided by Customer for the following (in which the Customer's trainers will have been trained in the Train-the-Trainer sessions provided by Vendor):

(2)   Customer trainers, training Customer employees, and Users

(3)   Role specific training for Customer employees, including:

(a)   Workflow

(b)   Documents

(c)   Dashboards

(d)   Use of documents specific to roles

(e)   One-to-one training by Customer trainers to Customer employees and Users

SCHEDULE 2.14
FEES

[insert full schedule of fees and due dates]