



RSM US LLP

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June 12, 2019

Nick Stroot
Human Resources Director
The City of Rapid City
300 6th Street
Rapid City, SD 57701

Dear Nick:

Thank you for considering RSM US LLP to assist with the consulting needs of The City of Rapid City. After your review, we ask that you please sign the Master Services Agreement.

We look forward to working with you on your consulting needs.

Sincerely,

Cyndi Mergele
Senior Director
RSM US LLP
210 253 1610

Michael Shedek
Manager
RSM US LLP
319 298 5246

Enclosures:

Master Services Agreement, including Exhibit I, Microsoft Product Rider

Master Services Agreement—Technology Services 1-1-19

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AUDIT | TAX | CONSULTING

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (“Agreement”) is made as of the date of the later signature below (“Effective Date”) by and between RSM US LLP, an Iowa limited liability partnership, with an office at 110 South Phillips Avenue, Suite 300, Sioux Falls, SD 57104 (“RSM,” “we,” “us” or “our”) and The City of Rapid City, with an office at 300 6th Street, Rapid City, SD 57701 (“Client,” “you” or “your”). This Agreement will serve as the master agreement for the provision of all Services (defined below) to Client by RSM during the Term (defined below). RSM and Client are also individually referred to herein as a “Party” and together as the “Parties.” This Agreement includes the Terms and Conditions, all Exhibits, all Statements of Work included herein or issued hereunder, and any and all attached or incorporated policies, schedules and/or other documents.

TERMS AND CONDITIONS

1. The Services

1.1. Scope.

1.1.1. Statement(s) of Work. RSM will furnish to Client the services (“Services”) described in separately executed statements of work (“Statement(s) of Work”), which refer to and incorporate the terms of this Agreement. Each Statement of Work will specify (i) the specific Services to be furnished by RSM; (ii) client-specific deliverables, if any, (the “Client Deliverables”); (iii) a description of features and specifications of the Client Deliverables resulting from such Services; (iv) a description of any actions, input or obligations of Client upon which RSM’s performance of the Services is dependent; (v) a mutually agreed upon performance schedule relating to such Services; (vi) the applicable Fees (as defined in Section 3.1) and payment terms related thereto; (vii) applicable acceptance testing and criteria; and (viii) any other applicable terms and conditions. In each Statement of Work, each Party will designate a “Project Manager/Lead” who will be the principal point of contact between the Parties for all matters relating to the Services provided under such Statement of Work. The Parties may change

the designated “Project Manager/Lead” upon written notice to the other Party.

1.1.2. Conflict in Terms. In the event of a conflict between these terms and a term set forth in an attached or incorporated Statement of Work, policy, schedule or any other document (including purchase orders, invoices and checks), the term set forth in these terms will control unless the conflicting term specifically references the inconsistent term and the Parties have mutually agreed to such conflicting term and executed such other document, in which case the conflicting term will control only for the limited purposes set forth in the document containing such term.

1.2. Timetable. Each Party will use commercially reasonable efforts to adhere to the timetable set forth in the applicable description of Services. Each Party will promptly notify the other Party of any circumstances that may reasonably be anticipated or of which it becomes aware that may lead to a material delay.

1.3. Change Orders. Client may request, or RSM may recommend, additional services or modifications to the requested Services by delivering a written change order request to the other Party. RSM will determine the cost and/or

schedule impact, if any, of the requested or recommended change, and memorialize this in a written proposal delivered to Client ("Change Order"). Each Change Order will be effective when signed by both Parties. RSM will not be obligated to perform the requested changes unless (i) the Parties agree on the terms of a Change Order and (ii) the applicable Change Order has been executed by the Parties. Notwithstanding the requirement for signature in this paragraph, Change Orders communicated by email correspondence will be deemed effective if (i) the communication clearly references that the message is intended to constitute a Change Order; and (ii) the communication is clearly or unequivocally confirmed by individuals in writing or via email with the authority to execute a written Change Order for each Party. Significant additional projects will be the subject of mutually agreed, separately executed Statements of Work.

1.4. Use of Subcontractors.

1.4.1. RSM may, in its sole discretion, retain qualified third parties and service providers ("Third-Party Contractor(s)"), or Affiliates (as defined in Section 1.6) of RSM, including related entities, located within or outside of the United States, to furnish services to it in connection with its Services. In addition, RSM may arrange for one or more of the member firms of the RSM International network to provide services to Client outside of the United States. Each member of the RSM International network (an "RSM Network Firm") is an independent accounting and advisory firm each of which practices in its own right. The RSM International network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598), and is not itself a separate legal entity of any description in any jurisdiction. RSM is an RSM Network Firm. Third-Party Contractors,

Affiliates of RSM, and RSM Network Firms may be collectively referred to herein as "Subcontractors."

1.4.2. RSM will be responsible to Client for the performance of its Affiliates, RSM Network Firms, and any Third-Party Contractors solely as related to their services performed under this Agreement subject to the limitations set forth herein. Notwithstanding the foregoing, nothing in this Agreement shall be construed to create the relationship of principal and agent, employer and employee, partners or joint venturers between RSM and any Third-Party Contractor or RSM Network Firm.

1.4.3. Client on behalf of itself and each Client Affiliate, agrees that it will not bring any claims against an Affiliate of RSM or an RSM Network Firm for matters solely arising from or related to the services provided by such firms under this Agreement. **FOR PURPOSES OF SECTION 7.7 (LIMITATION OF LIABILITY) OF THIS AGREEMENT, THE TOTAL LIABILITY OF RSM US LLP AND ITS PARTNERS, PRINCIPALS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AFFILIATES AND AGENTS WITH RESPECT TO CLAIMS ARISING FROM LOCAL COUNTRY SERVICES PERFORMED BY AN RSM NETWORK FIRM WILL IN NO EVENT EXCEED AN AMOUNT EQUAL TO SUCH FIRM'S FEES FOR ITS SERVICES UNDER THE APPLICABLE STATEMENT OF WORK.**

1.4.4. RSM understands and agrees that the confidentiality, data protection and security requirements contained in this Agreement also apply to any Subcontractors, contractors, temporary employees or other third parties who may receive access to any personal data or any other confidential or proprietary information from RSM under this Agreement. RSM may share Confidential Information (as defined in Section

9.2) (including this Agreement) with Subcontractors on the same basis as RSM would be permitted to share information with RSM partners, principals and employees; provided that such recipients are bound by written obligations of confidentiality that are as protective of Client Confidential Information as the confidentiality terms set forth herein. Client acknowledges and agrees that (i) RSM's use of Subcontractors may involve the movement and storage of Client Materials and data outside of the RSM technology infrastructure, and (ii) an RSM Network Firm may also share with RSM, any work product, time and billing information, or any other information concerning Client or its Affiliates reasonably necessary for RSM to perform its Services for Client.

1.5. Client Responsibilities.

1.5.1. Client shall be responsible for cooperating with RSM in its provision of the Services as set forth in each Statement of Work. Without limiting the generality of the foregoing, in connection with the performance of the Services, Client shall:

1.5.1.1. assign a Client Project Manager for each specific Statement of Work who possesses suitable skills, knowledge and experience to oversee the Services and is granted sufficient authority from Client to make decisions regarding the Services in a timely manner, and maintain the levels of sufficiently skilled staffing to undertake the Client responsibilities contemplated by a Statement of Work, including staffing levels sufficient to accept responsibility for system operations following completion of systems implementation services and transition to Client management of such systems;

1.5.1.2. evaluate the adequacy and results of the Services in accordance with the timetable(s) set

forth in the applicable Statement(s) of Work, and with the acceptance testing process specified therein, or as provided in Section 2, if not specified in the applicable Statement(s) of Work, subject to any warranty obligations contained herein;

1.5.1.3. ensure that Client's Project Manager and other appropriate personnel shall participate in regular project status and assessment meetings with the RSM Project Manager or other RSM designee, and if applicable, in accordance with a schedule specified in the applicable Statement of Work;

1.5.1.4. provide or assist in gaining access to personnel, staff, premises, computer systems, and applications as reasonably required by RSM to perform the Services;

1.5.1.5. make all management decisions and perform all management functions, including retaining all authority and responsibility for making any decisions based upon RSM advice;

1.5.1.6. designate an individual who possesses suitable skills, knowledge and/or experience, preferably within senior management, to oversee such Services;

1.5.1.7. evaluate the adequacy and results of the Services performed;

1.5.1.8. accept responsibility for the results of the Services; and

1.5.1.9. establish and maintain internal controls, including monitoring ongoing activities.

1.5.2. RSM will not perform any management functions, make management decisions, and, except as explicitly provided in an applicable Statement of Work, perform in a capacity equivalent to that of Client's personnel.

1.5.3. For any internal audit or Sarbanes-Oxley Act related services, Client's management acknowledges its responsibility for (i) establishing and maintaining effective internal control over financial reporting and safeguarding assets, (ii) identifying and ensuring that Client complies with the requirements of the Sarbanes-Oxley Act and other Laws applicable to Client's activities, (iii) informing RSM of all significant deficiencies and material weaknesses in internal controls of which Client has knowledge, and (iv) making all financial records and related information, including existing internal control documentation and management's evaluation of design and operating effectiveness, available to RSM.

1.6. Affiliates. This Agreement may be extended to any Affiliate of Client, under the same terms and conditions of this Agreement; in which case the term "Client" shall include any Affiliate of Client that executes any Statement(s) of Work (a "Participating Affiliate"). "Affiliate" means any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a Party to this Agreement. For the purposes of this Section 1.6, "control" means (i) in the case of corporate entities, direct or indirect ownership of greater than fifty percent (50%) of the stock or shares entitled to vote for the election of the board of directors or other governing body of the entity and (ii) in the case of non-corporate entities, direct or indirect ownership of greater than fifty percent (50%) of the equity interest. By virtue of its execution of any Statement of Work, a Participating Affiliate shall be deemed to have accepted all terms and conditions of this Agreement. Notwithstanding any disclosure of Client Confidential Information in accordance with Section 9.1, neither this Agreement nor any Statement of Work will create any client relationship between RSM and (i) any natural

person or (ii) any entity other than a Participating Affiliate.

1.7. Provision of Certain Services Outside of the United States by RSM Network Firm(s).

1.7.1. Provision of Services to Affiliates of Client by an RSM Network Firm(s) where (i) such Services are to be directly billed between an RSM Network Firm(s) and a Client Affiliate(s); (ii) such Services require the transfer of confidential, personal, or similar sensitive information subject to legal requirements of a local country; (iii) such Services require the acknowledgement of regulatory terms unique to the provision of Services in a specific jurisdiction; or (iv) any other local and customary requirement of a particular jurisdiction, which in the reasonable judgment of RSM, Client, an RSM Network Firm or a Client Affiliate, requires the execution of a local services agreement between an RSM Network Firm(s) and a Client Affiliate(s), (an "RSM Network Firm Local Services Agreement") requires that a Client Affiliate and relevant RSM Network Firm execute a mutually agreed upon local services agreement in RSM's form. The RSM Network Firm Local Services Agreement shall not modify the terms of this Agreement, except as specifically set forth in such RSM Network Firm Local Services Agreement and only to the extent necessary to reflect the legal requirements or terms pertinent to such RSM Network Firm.

1.7.2. Except as provided by this Agreement, RSM shall have no liability or obligations to Client (or any of its Affiliates) under an RSM Network Firm Local Services Agreement executed by a Client Affiliate and another RSM Network Firm, and Client shall have no liability or obligations to RSM under any such agreement.

1.8. Training; Support and Maintenance. To the extent and pursuant to the terms (including

applicable hourly fees and other financial terms) set forth in an applicable Statement of Work, RSM shall provide Client with training on the use and operation of the Services and any Deliverables and shall provide any support and maintenance services as specified therein.

1.9. Access to Client Network. In providing the Services, RSM may from time to time need to test, access, or use the Client's systems, applications, or hardware ("Client Network"). Client shall provide RSM with a copy of its safety, security, and facilities policies that are applicable to the use of and access to the Client Network and RSM shall abide by such communicated policies as appropriate under the circumstances. If compliance with such policies would in any way prevent RSM from performing as set forth in an applicable Statement of Work or would impair such performance, the Parties shall work in good faith to develop reasonable exceptions to such policies. If such exceptions cannot be agreed upon, the applicable Statement of Work will be modified to excuse RSM's performance of the affected Services. Client will reimburse RSM for its actual costs incurred if adherence to such policies requested or required by Client increases RSM's costs of providing the Services.

2. Acceptance Testing

2.1. Acceptance Tests. If applicable, upon delivery by RSM of the Client Deliverables, Client shall be responsible for conducting acceptance tests to verify that such Client Deliverables substantially conform to the specifications set forth in the applicable Statement of Work. Client acknowledges and agrees that the development, implementation and integration of business software systems is inherently not error-free and that corrections, "bugs" and defects arising prior to or subsequent to deployment are common. Unless otherwise specified in a Statement of

Work, the acceptance testing process shall be subject to the process set forth in this Section 2. Acceptance of the Client Deliverables by Client shall not unreasonably be withheld and will be deemed to occur on any of the following: (i) in the case of business software systems, Client's determination that its testing procedures have validated the Client Deliverables and that the system is ready for live production status; (ii) Client uses the Client Deliverables or any part or component thereof for purposes other than acceptance testing; (iii) fifteen (15) days have elapsed from the date of delivery or installation without Client having provided RSM written notice of a failure of the Client Deliverables to conform to the specifications set forth in the Statement of Work (such fifteen-day (15-day) period constituting the "Initial Test Period"); or (iv) Client has notified RSM in writing that it has accepted the Client Deliverables.

2.2. Notice of Nonconformities. If Client discovers a failure of any of the Client Deliverables to conform to the applicable specifications set forth in the Statement of Work ("Nonconformity"), Client will deliver a written notice specifying each Nonconformity in reasonable detail (a "Nonconformity Notice") to RSM on or before the expiration of the Initial Test Period.

2.3. Corrective Action. To the extent arising from RSM Services, RSM will correct the Nonconformities stated in the Nonconformity Notice within a reasonable period of time with the costs of such corrective action subject to the terms of the applicable Statement of Work. To the extent a Nonconformity arises from the underlying design, operation, performance or scalability of a Third-Party Product (as defined in Section 5.1), RSM will use commercially reasonable efforts to work with the Vendor (as defined in Section 5.3) of such Third-Party

Product to assist in Vendor's resolution with the fees for such assistance at the rates established in the applicable Statement of Work. After RSM and/or Vendor, as the case may be, makes such corrections to the nonconforming Client Deliverables and makes such Client Deliverables available to Client for acceptance, Client will have five (5) business days to retest the Client Deliverables. If any Nonconformities remain, the process stated above will be repeated.

2.4. Delivery. If applicable, upon the completion and acceptance of a Client Deliverable that requires the provision to Client of access to computer code, RSM will deliver a copy of the applicable computer code and any applicable documentation to Client (or to Client's designated hosting provider) as specified in the Statement of Work.

3. Compensation

3.1. Fees. Unless otherwise agreed upon in the applicable Statement of Work, fees for the Services described in this Agreement and any applicable Statement of Work ("Fees") will be based upon actual time, plus travel time at RSM's standard rates in effect at the time the Services are rendered.

3.2. Expenses. In addition to RSM's Fees, RSM will be entitled to reimbursement of its reasonable expenses incurred in connection with the Statement of Work. Accordingly, Client will be invoiced for (i) direct expenses, including, as applicable, amounts attributable to travel, meals, fees and expenses for services from other professionals, and for services provided by RSM's Subcontractors; and (ii) to the extent provided by and specified in an applicable Statement of Work, a charge based upon a percentage of Fees for indirect administrative expenses, and for such other items as the Parties

may agree upon in writing. Expenses will be detailed in RSM's monthly invoice. Upon Client's written request, RSM will provide documentation of its travel expenses.

3.3. Taxes Reserved.

3.4. Payment. Each month, RSM will submit an invoice to Client for its Fees and Expenses. RSM at its discretion may invoice Client as RSM US LLP or from one of its Affiliates. Such invoices will be due and payable within forty-five (45) days of Client's receipt of the invoice. If specified in the applicable Statement of Work or services rider, invoicing and payment for RSM's Services will be in accordance with specific schedules set forth therein. RSM will use commercially reasonable efforts to include all Expenses on its invoices on a timely basis, but Client acknowledges and agrees that certain Expenses may not appear upon the same invoice on which the related Fees appear.

3.5. Disputes and Remedies.

3.5.1. If Client objects to any portion of an invoice, Client will provide written notice of its objection to RSM within ten (10) days of the date it receives the applicable invoice, including a detailed description of the basis for Client's contention that any invoiced amounts are incorrect and any applicable supporting documentation. Client will be responsible for payment of the portion of the invoice that is not in dispute within forty-five (45) days of the date it received the applicable invoice. If Client and RSM cannot resolve the disputed amounts within ten (10) days thereafter, the dispute shall be escalated to the senior management of each respective Party, who shall engage in good faith efforts to promptly resolve such dispute. If it is determined by the Parties that Client owes all or part of any amount subject to dispute, Client shall

remit such amount to RSM within five (5) days of such determination.

3.5.2. In the event that Client fails to pay any undisputed invoiced amounts within sixty (60) days of their due date, upon written notice to Client, RSM shall have the right to suspend or terminate its Services under any and all outstanding Statements of Work until such time as Client pays such undisputed amounts invoiced in full. RSM will not be liable for any resulting loss, damage or expense connected with such suspension including, but not limited to, any loss of information or data stored on a Third-Party Product.

3.5.3. The foregoing provisions do not limit RSM from pursuing any other rights available at Law or in equity and is in addition to, not in lieu of, RSM's termination rights under Section 8 and/or under an applicable Statement of Work.

4. Use and Ownership

4.1. Client Software and Materials. Client will supply to RSM certain content and materials as specified in the applicable Statement(s) of Work ("Client Materials") as necessary to enable RSM to perform the Services. Client will retain ownership of Client Materials. Client hereby grants to RSM solely for the purposes of providing Services hereunder, a non-exclusive, non-transferable right to use and copy for archival purposes, the Client Materials, and further, to the extent that such materials include software, to (i) use; (ii) copy for archival purposes; (iii) modify software developed and owned by Client; and (iv) to the extent permitted by the licenses or leases with respect to the Client's third-party software, modify such software (with the software and related documentation described in these subsections (iii) and (iv) collectively, "Client Software"); provided, however, that RSM may not

decompile, disassemble or otherwise reverse engineer Client's Software in any manner. Client shall, at no cost to RSM, provide RSM with access to Client's Software in the form in use by Client, as necessary solely for the purpose of enabling RSM to perform the Services. Subject to any other terms herein, RSM may sublicense to RSM's Subcontractors, the right to have access to, operate and/or modify Client Software and Client Materials as may be necessary in connection with the provision of the Services.

4.2. RSM Work Product. "RSM Work Product" means any work product authored, prepared, developed or created in connection with the Services, including, but not limited to, (i) modifications, improvements or enhancements to Client Software and Third-Party Products, and (ii) documentation, reports, advice, presentations, analyses, recommendations or similar communications, training materials, computer media, and other tangible material, and ideas, concepts, know-how, and techniques related thereto.

4.3. RSM Information. RSM reserves all rights in and to all RSM Work Product, along with all proprietary works of authorship created, developed or purchased by RSM (or any third party under contract to RSM) independent of the Services provided hereunder, including without limitation, trademarks, service marks, copyrights, trade secrets, know-how, software, software architecture, software design, generic programming codes, and segments (including reusable code, scripts and applets), methodologies, flowcharts, templates, specifications, tools, notes, programming techniques, routines, reusable objects, and similar materials, including improvements, enhancements and modifications thereto created in the course of performing the Services hereunder (collectively referred to herein as

“RSM Proprietary Material” and together with RSM Work Product, referred to herein as the “RSM Information”). Except for Client license rights explicitly granted herein, all right, title, copyright and interest in the RSM Information will be and shall remain, the sole and exclusive property of RSM.

4.4. License to Client Deliverables and RSM Information. Subject to the limitations set forth herein, upon final payment for the Services in connection with an applicable Statement of Work, Client shall have a perpetual, nontransferable (except as permitted under Section 11.1), royalty-free, worldwide license, without the right to grant sublicenses (except that Client may grant sublicenses to its Participating Affiliates consistent with the license restrictions and limitations set forth herein), to use, copy and modify the Client Deliverables delivered by RSM thereunder, including the RSM Information incorporated therein or provided therewith (i) solely for the purpose of using such materials in Client’s internal business and (ii) in accordance with any limitations and restrictions set forth in Client’s licenses with third parties. This license to RSM Information does not entitle Client to any updates, upgrades or new versions of the RSM Information or any related support or services, unless otherwise specified by RSM in an applicable Statement of Work.

4.5. Additional Client License and Usage Rights. Client may provide third parties, including independent contractors, that it retains to host, maintain or otherwise provide services to Client in connection with its information technology, software or systems (collectively, “Authorized User(s)”) access to, and the right to use, the Client Deliverables, as well as any RSM Information incorporated therein or provided therewith, but solely in furtherance of Client’s use of Client Deliverables and solely for the benefit of

Client or its Participating Affiliates; provided, however, prior to Client granting such Authorized Users access to, or use of, any RSM Information for the purposes set forth herein, Client shall enter into written obligations of confidentiality with such Authorized Users at least as restrictive as those contained in this Agreement and which restrict such Authorized Users from using for their benefit, or disclosing to any other person or entity, any RSM Information except as required by Law or expressly permitted under this Agreement. Client will be responsible for any unauthorized access to, or use or disclosure of, RSM Information by Client or its Affiliates or Authorized Users, or any of their respective employees, officers, directors, agents or representatives. Notwithstanding anything stated to the contrary herein, no Authorized Users shall be granted access to, or be allowed to use, any of RSM’s project management tools, such as RSM’s SharePoint site, without RSM’s express written consent. Except as set forth in a Statement of Work or otherwise permitted in this Agreement, Client may not reuse, resell or disclose RSM Information to any third party. Further, Client is expressly prohibited from disaggregating RSM Information from the Client Deliverables.

4.6. Notwithstanding anything stated to the contrary in this Agreement, as between RSM and Client, any information, data or material provided by Client to RSM in connection with RSM’s Services hereunder shall remain, and is, the sole and exclusive property of Client.

4.7. Non-Exclusivity. Nothing in this Agreement shall preclude RSM from developing, marketing, licensing or selling for itself, or for others, software, templates, generic programming codes and segments (including reusable code, scripts and applets), methodologies, tools, know-how, notes, programming techniques, routines, reusable

objects, software architecture and similar materials that are the same, similar to, or competitive with the Services or Client Deliverables provided hereunder, subject only to the terms of Section 9. Client shall not have any right by virtue of this Agreement to the income or proceeds derived by RSM therefrom.

4.8. No Implied Licenses or Transfer of Ownership. All rights not expressly granted herein shall remain the sole and exclusive property of RSM.

4.9. Sole Benefit and Use. Client acknowledges and agrees that any advice, information or Client Deliverables (including any RSM Information incorporated therein or provided for use therewith) provided to Client by RSM in connection with this Agreement is for the sole benefit and use of Client and, except (i) as expressly permitted by the applicable Statement of Work or Section 4.5 or (ii) for provision to Client's regulators, auditors and advisors in the ordinary course of business as necessary, may not be made available to or relied upon or used by any third party unless Client first obtains from such third party or Client Affiliate and provides to RSM an executed non-reliance and release letter substantially in RSM's form with respect to such disclosed information. Upon Client's explicit request and if contemplated by the applicable Statement of Work, RSM will promptly provide copies of its applicable work papers to Client's regulators. In no event will RSM's advice, information, RSM Information, or Client Deliverables be referred to or quoted, in whole or in part, in any registration statement, prospectus, public filing, loan agreement or other document without RSM's prior written approval.

5. Third-Party Products

5.1. RSM may (i) purchase on behalf of Client (with Client's prior approval); (ii) provide Services to Client in connection with; and/or (iii) recommend or specify as part of the Services that Client purchase, license and/or subscribe to, certain third-party hardware, software, software services, managed services (including, but not limited to, web hosting, data security, data back-up email security, or similar services subject to direct end-user or subscription agreements), applications, and equipment (collectively, "Third-Party Products," each individually a "Third-Party Product," a "Third-Party Hardware Product," or a "Third-Party Licensed Product" as applicable). Any Third-Party Products being purchased through RSM or one of its Affiliates will be identified in the applicable Statement of Work, Change Order, or purchase order.

5.2. Subcontracting through an RSM Affiliate. In the event RSM is purchasing, licensing or subscribing to a Third-Party Product on behalf of Client, RSM will subcontract the resale or sublicense of such Third-Party Product to an RSM Affiliate. With respect to such transactions, activities in the U.S. will be undertaken by RSM US Product Sales LLC and activities in Canada by RSM US Canada, ULC. References herein to RSM US Product Sales LLC shall be deemed to refer to RSM US Canada, ULC for Canadian activities. RSM shall be responsible for the acts, omissions and obligations of such Affiliates as they relate to the subject matter of this Agreement subject to the limitations and disclaimers set forth herein.

5.3. Revenue Share. Client acknowledges and understands that RSM or its Affiliates may receive compensation in the form of a commission, resale margin, or revenue share in connection with the sale, license and/or subscription of certain Third-Party Products, or in connection with being designated as Client's

“partner of record” (or similar designation) with a licensor, manufacturer or owner (collectively referred to herein as “Licensor,” “Supplier” or “Vendor”) of a Third-Party Product.

5.4. Disclaimers and Client Acknowledgements.

5.4.1. Client acknowledges and agrees that (i) RSM’s (or RSM US Product Sales LLC’s) purchase, licensing or subscription to a Third-Party Product on behalf of Client (or RSM’s designation as a “partner of record” in connection with a Third-Party Product); (ii) RSM’s Services to Client in connection with a Third-Party Product; and (iii) RSM’s recommendation or specification as part of the Services that Client purchase, license and/or subscribe to a Third-Party Product, are subject to the terms and conditions set forth herein. Client further acknowledges that RSM’s recommendation of a Third-Party Product is intended to be used only as a guideline and that the actual operation, performance and scalability of a Third-Party Product may vary based on such factors as final configuration and changes in, or Client’s failure to meet, infrastructure requirements or specifications.

5.4.2. The license, end-user subscription agreement, or other end-user agreement (collectively, “EULA(s)”) for a Third-Party Product shall be between Client and the Licensor of the Third-Party Product solely. Client further acknowledges that its usage of a Third-Party Licensed Product may involve the movement and storage of Client’s data solely within the infrastructure provided by the Third-Party Licensed Product and not RSM’s, and that Client’s EULA or other agreements with the Licensor of such Third-Party Licensed Product will govern all obligations relating to data privacy, storage, recovery, security, and processing, as

well as the service levels, associated with such Third-Party Licensed Product.

5.4.3. NEITHER RSM, NOR ANY OF ITS PARTNERS, PRINCIPALS, DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AFFILIATES, SUBSIDIARIES, AGENTS OR REPRESENTATIVES (COLLECTIVELY, THE “RSM PARTIES” AND EACH INDIVIDUALLY, AN “RSM PARTY”), MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ANY THIRD-PARTY PRODUCT. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT ITS USE OF A THIRD-PARTY PRODUCT IS AT CLIENT’S SOLE RISK AND THAT THIRD-PARTY PRODUCTS ARE RECOMMENDED AND/OR SUPPLIED BY THE RSM PARTIES “AS IS” AND WITHOUT WARRANTY OF ANY KIND FROM THE RSM PARTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

5.4.4. Client agrees to observe the terms of any applicable EULA and Client shall be fully responsible with respect to Client’s improper use of a Third-Party Product or violation of the applicable EULA. Client’s remedies with respect to a Third-Party Product will be limited to whatever recourse may be available against the Licensor thereof and are subject to all restrictions and other limitations as may be displayed or referenced by the EULA. Without limiting the generality of the foregoing, if a Statement of Work or Change Order provides for RSM to provide support, configuration, implementation, installation or deployment services relating to a Third-Party Product, any warranties of RSM relate to and are applicable to RSM’s Services

only, not to such Third-Party Product. The underlying design, operation, performance, or scalability of, and all warranties applicable to, a Third-Party Product shall be governed exclusively by the Licensor's warranty (including any extended warranty package purchased by Client), and no RSM Party shall have any liability for the foregoing.

5.4.5. Client understands and agrees that the ability of RSM and RSM US Product Sales LLC to obtain Third-Party Products may be subject to availability and delays due to causes beyond its control and that no RSM Party shall be liable to Client for such delays or lack of availability with respect to a specific Third-Party Product.

5.4.6. In the event a Statement of Work, Change Order, or purchase order relates to the provision of a "Microsoft Product" (as such terms is defined in Exhibit I attached hereto) to Client by Microsoft, either under a resale agreement between RSM or its Affiliate and Microsoft, or through an Enterprise Agreement between Client and Microsoft, the terms set forth in the "Microsoft Product Rider" attached hereto as Exhibit I shall apply to such Microsoft Product. To avoid any doubt, such Microsoft Product is a Third-Party Product subject to the terms set forth in Section 5 except as otherwise stated in Exhibit I. Notwithstanding anything stated to the contrary in this Agreement or any conflict or inconsistency between a term set forth in Exhibit I and the Agreement, the terms set forth in Exhibit I shall prevail and govern with respect to the Microsoft Product. Client hereby does accept and agree to be bound by, and acknowledges that it has reviewed or had an opportunity to review, Exhibit I, including all Microsoft agreements referenced or incorporated therein. All capitalized terms set forth in this Section 5.4.6, which are not otherwise defined in this Agreement, are defined in Exhibit I (Microsoft Product Rider).

5.5. Payment. The applicable Statement of Work, Change Order, or purchase order shall include the pricing for any Third-Party Products that will be purchased or licensed thereunder. Unless otherwise set forth in the Statement of Work, Change Order, or purchase order, Client shall be responsible for payment of all freight charges associated with the shipment of Third-Party Hardware Products from the Supplier or RSM, as the case may be, to the Client facility.

5.6. Shipment/Risk of Loss. Unless otherwise set forth in a Statement of Work, Change Order, or purchase order, all prices shown are FOB Supplier's facility. All transportation, freight, rigging, drayage, insurance and other costs of delivery of Third-Party Products to the Client facility will be paid by Client. Risk of loss shall pass to Client upon shipment. Unless Client specifies shipping instructions, RSM shall select a common carrier on Client's behalf and shall arrange for delivery of the Third-Party Hardware Products to the Client facility.

5.7. Title to Third-Party Products/Security Interest. Title to all Third-Party Hardware Products shall remain with Supplier or RSM US Product Sales LLC, as the case may be, until all payments therefore are made by Client. Client hereby grants to RSM US Product Sales LLC, a security interest in each component part of the Third-Party Hardware Products until the purchase price due to RSM US Product Sales LLC is paid in full. Client shall execute any instruments or documents RSM US Product Sales LLC deems appropriate to protect the security interest and, in any event, this Agreement shall constitute a financing agreement within the meaning of Article 9 of the Uniform Commercial Code, and a copy of this Agreement may be filed at any time as a financing statement for that purpose. In the event of a

default in payment or other breach by Client, RSM US Product Sales LLC shall have all rights and remedies of a secured creditor upon default as provided by applicable Law. RSM US Product Sales LLC shall, at its sole expense, file releases for any financing statements recorded pursuant to this Agreement promptly after receiving final payment for the applicable Third-Party Hardware Products from Client.

5.8. Installation. If applicable under the Statement of Work or Change Order, RSM shall arrange for the installation, configuration or implementation of the Third-Party Products. Client shall not perform any installation activities without RSM's written consent. RSM shall have full and free access to the Third-Party Products and the Client facility where the Third-Party Products are installed until installation is completed. Client shall provide a suitable installation environment for the Third-Party Products as specified by RSM in the Statement of Work or Change Order. Unless otherwise set forth in the Statement of Work or Change Order, Client shall be responsible for (i) furnishing all labor required for unpacking and placing the Third-Party Hardware Products in the installation location and (ii) physical planning including, but not limited to, floor planning, cable requirements, and safety requirements in accordance with the installation manual and all applicable building, electrical, or other codes, regulations, and requirements.

5.9. Acceptance. Unless otherwise set forth in the Statement of Work or Change Order, Third-Party Hardware Products will be deemed to have been accepted when they pass RSM's standard post-installation test procedures at the Client facility.

5.10. Price Increase. Client acknowledges that the price of the license and/or subscription for

the use of a Third-Party Licensed Product is subject to increase during the term of the license and/or subscription or at the time of renewal. In the event RSM or RSM US Product Sales LLC is reselling a license and/or subscription to a Third-Party Licensed Product to Client, RSM will provide Client with at least thirty (30) days' prior written notice (an email will be sufficient) of an increase in the price of the subscription and/or license. To the extent Client does not agree to pay such increase in the license and/or subscription price, Client must provide written notice to RSM within thirty (30) days of notice of such increase. Upon receipt of such notice, RSM will cancel Client's subscription and/or license to the Third-Party Licensed Product.

5.11. Suspension/Termination. In the event an invoice for a Third-Party Licensed Product RSM or RSM US Product Sales LLC resells to Client is thirty (30) days past due, in addition to any other remedies available to RSM and RSM US Product Sales LLC at Law or in equity, upon written notice to Client, RSM and RSM US Products Sales LLC may suspend or terminate Client's usage of, access to, and the services provided to Client by, such Third-Party Licensed Product. No RSM Party will be liable for any resulting loss, damage or expense connected with such suspension or termination, including, but not limited to, any loss of information or data stored by Client on such Third-Party Licensed Product.

5.12. Migration of Data at Termination of License/Subscription. In the event RSM or RSM US Product Sales LLC is reselling a license and/or subscription to a Third-Party Licensed Product to Client, Client will have thirty (30) days from the effective date of termination of its license and/or subscription to request that RSM migrate any information and data stored on such Third-Party Licensed Product to another platform or

database. Unless otherwise agreed upon in writing by the Parties at such time, RSM will perform such Services at its then current hourly rates. Client shall be responsible for payment of any fees or costs charged by the Licensor of such Third-Party Licensed Product in connection with the migration of such information and data.

5.13. Sharing of Client Information with Licensor. Client hereby consents to RSM sharing with the Licensor of a Third-Party Product that information of Client required to administer, configure, implement, install, provision, deploy, and/or support such Third-Party Product.

5.14. ADDITIONAL LIMITATION OF LIABILITY. NOTWITHSTANDING THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS AGREEMENT, THE RSM PARTIES' AGGREGATE LIABILITY FOR A DEFAULT RELATING TO ANY THIRD-PARTY PRODUCTS SHALL BE LIMITED TO THE AMOUNT PAID BY CLIENT TO RSM OR ONE OF ITS AFFILIATE'S FOR THE THIRD-PARTY PRODUCT(S) GIVING RISE TO SUCH DEFAULT.

6. Warranties and Additional Disclaimers

6.1. Mutual. Each Party represents and warrants that (i) it is a legal entity duly organized, validly existing and in good standing; (ii) it has caused this Agreement to be executed on its behalf as of the Effective Date by an authorized representative with the requisite power and authority to bind it to the undertakings and obligations contained herein; (iii) all corporate or governing action necessary to convey such power and authority has been taken; (iv) this Agreement constitutes the legal, valid, and binding obligations of such Party, enforceable against it in accordance with its terms; (v) it will

comply with all foreign or United States federal, state or local law, statute, code, ordinance, rule, regulation, order, executive order, judgment, writ, stipulation, award, stay, injunction, decree or arbitration award, policies, guidance, court decision, and rule of common law or finding ("Law(s)") applicable to the performance of its obligations hereunder; (vi) it will avoid deceptive, misleading or unethical practices that could adversely affect the performance of the other Party's obligations under this Agreement or damage the reputation of the other Party; (vii) it is not a party to any agreement with a third party, the performance of which is reasonably likely to adversely affect its ability or the ability of the other Party to perform fully its respective obligations hereunder; and (viii) its performance of its obligations under this Agreement will not knowingly violate any other agreement between such Party and any third party.

6.2. Limited Warranty for Software Deliverable/Deployed System. RSM warrants that for a period of thirty (30) days following the acceptance date, any Client Deliverables that are software, excluding unmodified Third-Party Products, ("Software Deliverables") or a Deployed System (defined in this Section 6.2), will perform without Material Deficiencies (as defined in this Section 6.2) in functionality as specified in the Statement of Work (including any applicable documentation). In the event that Client notifies RSM in writing of a breach of the foregoing warranty within such thirty-day (30-day) period, RSM will resolve the problem free of additional charge within a commercially reasonable amount of time. The foregoing is Client's sole and exclusive remedy for a breach of this limited warranty. The term "Deployed System" as used herein means the business functionalities of the implemented system that Client tested, accepted and deployed in a live

production environment. The term “Material Deficiencies” as used herein means those deficiencies which are not covered under any support agreement entered into by and between RSM and Client.

6.3. Exclusions from Warranty. RSM will not be obligated under Section 6.2 to correct, cure or otherwise remedy any nonconformity if (i) Client has made any alteration to the Software Deliverables or Deployed System without RSM's authorization; (ii) the Software Deliverables or Deployed System have been misused or damaged other than by personnel of RSM; (iii) the nonconformity is a result of the combination of the Software Deliverables or Deployed System with third-party hardware, software or other technology that was not provided by or specified by RSM; (iv) the nonconformity is caused by data entered or provided by Client, in which the data is corrupted, erroneous or in an improper format; (v) the nonconformity arises or results from the underlying design, operation, performance or scalability of a Third-Party Product; or (vi) RSM has not been notified of the existence and nature of such nonconformity or defect within the warranty period.

6.4. Limited Warranty of Services. RSM warrants that the Services shall be performed with reasonable care in a diligent and competent manner. If Client believes RSM has breached the foregoing warranty in connection with any Statement of Work, Client shall provide written notice of such breach within thirty (30) days after the performance of such Services, in which the notice shall include specific details regarding such breach. RSM's sole obligation and liability therefore, and Client's sole and exclusive remedy, will be to correct any nonconformance with this warranty. RSM and Client will agree to a reasonable amount of time, based on its severity and complexity, within which RSM is to correct

the nonconformance. In the event RSM cannot correct the nonconformance within the agreed upon time period, RSM shall refund to Client the amount paid to RSM for the nonconforming portion of the Services. For sake of clarity, RSM's warranty with respect to any Services in connection with Software Deliverables or a Deployed System is governed by Section 6.2.

6.5. Infringement. If either Party receives information concerning an infringement or misappropriation claim related to any Client Deliverables, RSM may, at its expense and as its sole obligation and liability therefore, and as Client's sole and exclusive remedy, either (i) procure for the other Party the right to continue to use such Client Deliverable, (ii) modify such Client Deliverable to make it non-infringing, (iii) replace such Client Deliverable with a functional equivalent, or (iv) refund the amounts paid by Client for such Client Deliverable. In all such cases described above, Client will stop using the Client Deliverable immediately.

6.6. DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 6, THE CLIENT DELIVERABLES, RSM INFORMATION, RSM WORK PRODUCT, AND THE SERVICES ARE PROVIDED “AS IS” AND THE RSM PARTIES DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, (I) ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE; AND (II) ANY WARRANTY OR REPRESENTATION THAT ANY CLIENT DELIVERABLE IS FREE FROM ERROR. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY ANY RSM PARTY SHALL CREATE ANY WARRANTY. CLIENT SPECIFICALLY WAIVES

ANY AND ALL SUCH WARRANTIES AND REPRESENTATIONS.

6.7. Non-Reliance. Client acknowledges and agrees that no RSM Party has made or is making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in this Section 6, and that Client is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in this Section 6.

7. Indemnification and Limitation of Liability

7.1. Client's Indemnification of RSM. Client will indemnify and hold the RSM Parties harmless against all costs, fees, expenses, damages and liabilities (including reasonable attorneys' fees and costs) associated with (i) any third-party claim, affiliated or unaffiliated, arising from or relating to any Services, RSM Work Product, RSM Information, or Client Deliverables that Client uses or discloses to others in a manner other than that expressly permitted by this Agreement; (ii) a knowing misrepresentation by Client management that has caused, in any respect, RSM's breach of contract or negligence; or (iii) any claim brought by an Affiliate of Client but only if such Affiliate (a) fails to execute a Statement of Work and such Affiliate claims reliance on the Services, RSM Work Product, RSM Information, and/or Client Deliverables provided by RSM under this Agreement; (b) brings or threatens to bring a claim, action, suit or other legal proceeding against RSM in connection with such reliance; and (c) denies that such claim, action, suit or other legal proceeding is subject to the terms and conditions of this Agreement.

7.2. RSM's Indemnification of Client. RSM will indemnify and hold Client harmless against all costs, fees, expenses, damages and liabilities (including reasonable attorneys' fees and costs) associated with unaffiliated third-party claims arising from RSM's fraud or willful misconduct.

7.3. Mutual Indemnification Obligations; Infringement. Subject to the terms of this Section 7, RSM will defend Client against any claims made by an unaffiliated third party alleging any Client Deliverable infringes its patent, copyright or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which Client consents). Subject to the terms of this Section 7, Client will defend RSM against any claims made by an unaffiliated third party alleging any Client Software that Client provides to RSM infringes its patent, copyright or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which RSM consents). Each Party must notify the other Party promptly in writing of any claim and give the indemnifying Party sole control over its defense or settlement; provided, however, the non-indemnifying Party's written consent shall be required to the extent the settlement does not release the non-indemnifying Party from any and all liability, or admits liability, guilt or fault on the part of the non-indemnifying Party. The non-indemnifying Party agrees to provide the indemnifying Party with reasonable assistance in defending the claim, and the indemnifying Party will reimburse the non-indemnifying Party for reasonable out-of-pocket expenses that it incurs in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act.

7.4. The indemnifying Party's obligations will not apply to the extent that the claim or adverse final judgment is based on (i) the other Party's

use of any Client Deliverables or Client Software after the indemnifying Party notifies the other Party to discontinue use due to such a claim; (ii) the non-indemnifying Party combining the Client Deliverables or Client Software with a product, data or business process, including third-party add-ons or programs; (iii) damages attributable to the value of the use of a non-indemnifying Party's product, data or business process; (iv) the non-indemnifying Party's altering or modifying the Client Deliverables or Client Software, including any modifications by third parties; (v) the non-indemnifying Party's distribution of the Client Deliverables or Client Software to, or its use for the benefit of, any third party; (vi) the non-indemnifying Party's use of the indemnifying Party's trademarks(s) without express written consent to do so; (vii) for any trade secret claim, the non-indemnifying Party acquiring a trade secret (a) through improper means, (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (c) from a person (other than the indemnifying Party or its Affiliates) who owed to the third party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret; or (viii) the non-indemnifying Party's gross negligence, willful misconduct, or fraud. Each Party will pay and reimburse the other Party for any costs or damages that result from these actions.

7.5. Exclusive Remedy: Other Third-Party Claims. If any other type of third-party claim is brought against a Party regarding any Client Deliverables or Client Software, such Party must notify the other Party promptly in writing. This Section 7 provides the Parties' exclusive remedy for third-party infringement and trade secret misappropriation claims.

7.6. Application of Indemnification Terms. The terms of this Section 7 shall apply regardless of the nature of any claim asserted (including

those arising from contract law, statutes, regulations or any form of negligence whether of Client, RSM or others whether arising out of tort, strict liability or otherwise) and whether or not a Party was advised of the possibility of the damage or loss asserted. Such terms shall also continue to apply after any termination of this Agreement by either Party and during any dispute between the Parties.

7.7. LIMITATION OF LIABILITY. CLIENT AND RSM HAVE DISCUSSED THE RISKS AND REWARDS ASSOCIATED WITH THIS AGREEMENT, AS WELL AS RSM'S FEES FOR SERVICES. CLIENT AND RSM AGREE TO ALLOCATE CERTAIN OF THE RISKS SO THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF A PARTY (AND ITS RESPECTIVE PARTNERS, PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, SUBSIDIARIES, CONTRACTORS, SUBCONTRACTORS, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS) ARISING OUT OF, FROM, OR RELATING TO THIS AGREEMENT OR THE SERVICES, RSM INFORMATION, RSM WORK PRODUCT, OR CLIENT DELIVERABLES PROVIDED HEREUNDER, WILL NOT EXCEED THE TOTAL AMOUNT OF THE FEES PAID OR PAYABLE TO RSM BY CLIENT DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS UNDER THE STATEMENT OF WORK THAT GAVE RISE TO SUCH LIABILITY. IN NO EVENT WILL CLIENT OR RSM (OR THEIR RESPECTIVE PARTNERS, PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, SUBSIDIARIES, CONTRACTORS, SUBCONTRACTORS, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS) BE LIABLE FOR THE INTERRUPTION OR LOSS OF

BUSINESS, OR ANY LOST PROFITS, SAVINGS, REVENUE, GOODWILL, SOFTWARE, HARDWARE, OR DATA, OR THE LOSS OF USE THEREOF (REGARDLESS OF WHETHER SUCH LOSSES ARE DEEMED DIRECT DAMAGES), OR INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR SIMILAR SUCH DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION 7.7 SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION 7.

8. Term and Termination

8.1. Term. This Agreement will commence on the Effective Date and will continue until it is terminated by one or both of the Parties in accordance with this Section 8.

8.2. Material Breach. Either Party may terminate this Agreement for a material breach that remains uncured for thirty (30) days after the breaching Party receives written notice of such breach from the non-breaching Party. The failure of Client to make full payment of any and all undisputed amounts invoiced in a timely manner constitutes a material breach of this Agreement. RSM will not be liable to Client for any resulting loss, damage or expense connected with a termination for Client's material breach under this provision.

8.3. Termination without Cause. Unless otherwise set forth in a Statement of Work or a services rider, either Party may terminate this Agreement for any reason upon fifteen (15) days prior written notice to the other Party. If a Statement of Work contains a longer notice period for termination without cause than that set

forth herein, then the notice period in the applicable Statement of Work will govern; provided, however, that if Client terminates pursuant to this Section 8.3, it must pay all outstanding fees and expenses for Services actually performed and Client Deliverables or portions thereof delivered (in each case, even if such Services or Client Deliverables are incomplete) as of the effective date of termination. If any Statement of Work or services rider hereunder contains payment terms on any basis other than fees and expenses paid on time and materials basis, then this Section 8.3 shall not govern such Statement of Work or services rider unless such Statement of Work or services rider expressly states otherwise.

8.4. Additional RSM Termination Right. RSM reserves the right to terminate this Agreement or any applicable Statement of Work if (i) circumstances arise that would cause RSM's continued performance to result in a violation of Law, a regulatory requirement, a legal process, a contractual obligation, or applicable professional standards or (ii) if Client is placed on a verified sanctioned entity list, or if any director or executive of, or other person closely associated with Client or a Client Affiliate is placed on a verified sanctioned person list, in each case, including, but not limited to, lists promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. State Department, the United Nations Security Council, the European Union or any other relevant sanctioning authority.

8.5. Effect of Termination. Upon the effective date of a termination of this Agreement (i) each Party shall promptly return to the other all Confidential Information (in accordance with the provisions set forth in Section 9) of the other Party in its possession; (ii) RSM shall submit to Client an itemized final invoice for any fees,

reimbursable expenses, and any related taxes not previously invoiced under this Agreement; (iii) within thirty (30) days after receipt of RSM's final invoice, Client shall pay all undisputed amounts due RSM pursuant to such invoice and all other outstanding invoices; (iv) RSM shall have no further responsibility for any incomplete or in-process Client Deliverable as of the date of termination; and (v) to the extent both Parties mutually agree at such time, RSM will provide Client with up to thirty (30) days of termination transition services. The scope, cost, and timing of such termination transition services will be mutually agreed upon by the Parties at such time. With respect to a termination of a Statement of Work, the Parties shall follow the requirements of clauses (ii), (iii), (iv) and (v) only.

8.6. Survival. The following Sections will survive the termination of this Agreement as applicable: 3.4 (Payment), 4 (Use and Ownership), 5 (Third-Party Products), 6 (Warranties and Additional Disclaimers), 7 (Indemnification and Limitation of Liability), 8.5 (Effect of Termination), 9 (Confidentiality) subject to the provisions set forth in Section 9.14, and 11 (General Provisions), together with accrued payment obligations.

9. Confidentiality

9.1. Use of Confidential Information. The Parties may, from time to time, disclose Confidential Information (as defined in Section 9.2) to one another. Accordingly, each Party agrees as the recipient (the "Receiving Party") to keep strictly confidential all Confidential Information provided by the other Party (the "Disclosing Party"). The Receiving Party further agrees to use the Confidential Information of the Disclosing Party solely for the purpose of exercising its rights and fulfilling its obligations under this Agreement or applicable Statement of

Work. The Receiving Party may not use for its own benefit or otherwise disclose any of the Confidential Information of the Disclosing Party for any other purpose. Without Client's prior written consent, RSM will not disclose the fact that it is providing Services to Client, nor disclose to any unauthorized third party any details concerning this Agreement, including the subject of Services. Notwithstanding the preceding, RSM may disclose Client Confidential Information to any Client Affiliate who directly or indirectly is in control of Client (as defined in Section 1.6). In addition, RSM may use Confidential Information provided to it for purposes of creating benchmarking data to be used by RSM professionals and shared with other clients. Any such benchmarking data will be de-identified or aggregated with data from other entities so that users are unable to associate the information with any specific source.

9.2. Definition of Confidential Information. "Confidential Information" means, subject to Section 9.4, information in any form, oral, graphic, written, electronic, machine-readable or hard copy consisting of (i) any non-public information provided by the Disclosing Party, including but not limited to, all of its inventions, designs, data, source and object code, programs, program interfaces, know-how, trade secrets, techniques, ideas, discoveries, marketing and business plans, pricing, profit margins and/or similar information; (ii) any information that the Disclosing Party identifies as confidential; (iii) Personal Information as provided in Section 9.11; or (iv) any information that, by its very nature, a person in the same or similar circumstances would understand should be treated as confidential. Without limiting the generality of the foregoing, Client acknowledges and agrees that RSM Information constitutes Confidential Information.

9.3. Exclusions. The term “Confidential Information” will not include information that (i) is publicly available at the time of disclosure by the Disclosing Party; (ii) becomes publicly available by publication or otherwise after disclosure by the Disclosing Party, other than by breach of this Section 9 by the Receiving Party; (iii) was lawfully in the Receiving Party's possession, without restriction as to confidentiality or use, at the time of disclosure by the Disclosing Party; (iv) is provided to the Receiving Party without restriction as to confidentiality or use by a third party without violation of any obligation to the Disclosing Party; or (v) is independently developed by employees or agents of the Receiving Party who did not access or use the Confidential Information.

9.4. Protection of Confidential Information. Except as provided in Sections 1.4.4 and 4.5, the Receiving Party agrees to disclose the Confidential Information of the Disclosing Party solely to its personnel, agents and representatives for the purpose of exercising the Receiving Party's rights and fulfilling the Receiving Party's obligations hereunder and only to those individuals who are under confidentiality obligations at least as restrictive as those set forth herein. The Receiving Party will treat the Disclosing Party's Confidential Information with the same degree of care as the Receiving Party treats its own confidential and proprietary information, but in no event will such standard of care be less than a reasonable standard of care. The Receiving Party will promptly notify the Disclosing Party, if it becomes aware that any Confidential Information of the Disclosing Party has been used or disclosed in violation of this Agreement.

9.5. Data Protection Compliance. RSM takes reasonable steps to comply with all applicable privacy, cybersecurity and data protection Laws that may apply to the data it

processes on behalf of its clients. Upon request, but not more than annually during the term of this Agreement, RSM will deliver to Client a copy of its third-party provided SOC 2, Type 1 Certification evidencing the operating effectiveness of RSM's Information Technology (IT) control environment. RSM will also provide summaries of its IT security and disaster recovery policies and make its senior IT personnel reasonably available for discussion upon request. RSM's SOC 2, Type 1 Certification and any information RSM discloses to Client concerning its IT control environment shall constitute Confidential Information of RSM subject to the confidentiality obligations set forth under this Section 9.

9.6. Return of Confidential Information. Promptly upon the written request of the Disclosing Party or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy all tangible copies of the Disclosing Party's Confidential Information in its possession. RSM will, however, maintain a copy of any Confidential Information necessary to support its work product under this Agreement solely for reference and archive purposes, in accordance with applicable professional standards. With respect to Confidential Information communicated through email or which has been scanned or otherwise stored electronically by the Receiving Party, such Party will make commercially reasonable efforts to delete such information from its active storage medium. Notwithstanding the preceding, the Parties acknowledge that in the case of Confidential Information communicated through email or which has been scanned or otherwise stored electronically by the Receiving Party, the Receiving Party's deletion of (i) email messages from individual mailboxes or (ii) documents from network or individual hard drives will not result in

the removal of all copies of such information from the Receiving Party's back-up or archival systems. Any Confidential Information retained will remain subject to the confidentiality obligations of this Agreement, will be maintained in a secure environment, and will be destroyed in accordance with the Receiving Party's record retention policies. Neither the Receiving Party's retention of archival copies nor failure to remove copies from its back-up or archival systems will be deemed a breach of this Agreement.

9.7. Compelled Disclosure. In the event that the Receiving Party becomes legally compelled to disclose any of the Confidential Information of the Disclosing Party, or as may be required by applicable industry regulatory standards, the Receiving Party will provide the Disclosing Party with prompt notice, to the extent such notice is legally permissible, so that the Disclosing Party may, at its sole expense and discretion, seek a protective order or other appropriate remedy.

9.8. Remedy. Each Party acknowledges that the other Party may not have an adequate remedy in the event that it breaches the provisions of this Agreement regarding Confidential Information and that such Party may suffer irreparable damage and injury in such event. The breaching Party agrees that the non-breaching Party, in addition to seeking any other available rights and remedies as may apply, may seek an injunction restraining the breaching Party from committing or continuing such violation.

9.9. Pre-Existing Nondisclosure Agreements. In the event that the Parties have executed a separate nondisclosure agreement and such agreement does not automatically terminate or expire upon execution of this Agreement, such agreement shall be terminated as of the effective date of this Agreement.

9.10. Record Retention. RSM maintains a record retention policy for documents, including documents in electronic form, in its possession from Client and otherwise. Documents tendered to RSM in tangible form may be stored solely in electronic form. A summary of RSM's record retention policy is available to Client upon request. RSM will exert commercially reasonable efforts to follow its record retention policy and will destroy documents in accordance with its policy, unless otherwise instructed by Client or as otherwise agreed to by the Parties in writing.

9.11. Personally Identifiable Information.

9.11.1. The term "Personal Information" is any personal data that directly or indirectly identifies a natural person as may be defined by applicable privacy, data protection or cybersecurity Laws, and includes, but is not exclusive to non-public, personally identifiable information such as Social Security numbers, driver's license numbers or state-issued identification card numbers, credit or debit card numbers with or without any required security code, number or passwords, health information, and other personal information as defined by applicable Laws, whether of Client or Client's customers.

9.11.2. Each Party agrees that it will not transmit to the other, in any manner, (i) Personal Information that is not needed to render the Services hereunder and (ii) Personal Information that has not been encrypted. Client also confirms that it has provided all notices and obtained any consents required under applicable data protection Laws prior to its collection, use and disclosure to RSM of such Personal Information and shall take reasonable steps to ensure that such Personal Information does not include irrelevant or unnecessary information about individuals.

9.11.3. Client represents that it will identify any personal, technical or other data provided to RSM pursuant to this Agreement that may be subject to heightened protections under applicable privacy, cybersecurity and data protection Laws, including, but not exclusive to, protected health information pursuant to the Health Information Portability and Accountability Act of 1996 (“HIPAA”), classified or controlled unclassified information subject to Defense Federal Acquisition Regulation Supplement (“DFARS”), or International Traffic in Arms Regulations (“ITAR”) controlled data, prior to disclosure of such protected data to RSM. Prior to Client or its Affiliates furnishing any personal data to RSM or one of its Subcontractors or Affiliates in connection with this Agreement that originates from the European Economic Area, Switzerland, or another jurisdiction with data protection Laws based on or substantially similar to the European Union General Data Protection Regulation 2016/679, Client and RSM shall enter into the appropriate data privacy provisions and contractual clauses relating to the transfer and processing of such personal data as required by such data protection Laws.

9.11.4. RSM will use all such Client-provided Personal Information, if at all, only for the purposes described in the Statement of Work. RSM agrees to maintain appropriate security measures to protect such Personal Information in accordance with applicable Laws.

9.12. Unauthorized Access. If RSM becomes aware of an unauthorized acquisition or use of Confidential Information or a breach of security affecting such Confidential Information, it will promptly inform Client of such acquisition or breach as required by Law, and take reasonable steps to prevent further disclosure or use. RSM will also reasonably cooperate with Client in

support of any breach notification requirements as imposed upon Client by applicable Laws.

9.13. Limited Disclosure of Information for Evaluating Independence. This Section 9.13 applies if Client (i) has any international operation, (ii) owns more than ten percent (10%) of any class of securities issued by a foreign corporation or entity, or (iii) has a foreign corporation or entity as an owner of more than ten percent (10%) of any class of its securities. RSM is a member of RSM International, a network of independent accounting firms. Professional rules require RSM to evaluate auditor independence taking into consideration both RSM's Services to Client and Client's affiliates and any services to Client and Client's affiliates performed by other member firms of RSM International. To permit RSM to comply with these independence rules, Client agrees that RSM may disclose to and discuss with RSM International and its member firms (i) the name of any corporation, partnership, trust, limited liability company or other entity for whom RSM performs Services; (ii) any ownership relationship between that corporation, partnership, trust, limited liability company, or other entity and any other entity; and (iii) the nature of the Services that RSM performs. This information will be used solely for the purpose of evaluating the independence of RSM and other RSM International firms.

9.14. Survival. This Section 9 shall survive the termination or expiration of this Agreement for a period of one (1) year; provided, however, that with respect to (i) any Confidential Information that has been designated by the Disclosing Party as “trade secret” information; (ii) Personal Information; or (iii) RSM Information, the confidentiality obligations under this Section 9 shall remain in effect for so long as such Confidential and Personal Information retains its status under applicable Law.

10. Insurance

During the term of this Agreement, RSM shall maintain the following insurance coverage:

10.1. Worker's Compensation and Employers' Liability. Workers' Compensation coverage with statutory limits as required by the state in which the Services are performed and Employers' Liability coverage with a limit of \$1 million each accident for bodily injury, \$1 million each employee for bodily injury by disease, and \$1 million policy limit for bodily injury by disease.

10.2. Commercial General Liability. A Commercial General Liability policy with a limit of \$1 million per occurrence and \$2 million in the annual aggregate.

10.3. Automobile Liability. An Automobile Liability policy with a combined single limit of \$1 million.

10.4. Professional Liability. A Professional Liability policy with a limit of \$1 million per claim and in the annual aggregate.

10.5. Privacy and Security Risk (Cyber coverage). A Privacy and Security Risk Liability policy with a limit of \$1 million per claim and in the annual aggregate.

10.6. Crime. (Employee Theft, Premises and Computer Fraud). A Crime policy with a limit of liability of \$1 million per occurrence and in the annual aggregate.

10.7. Umbrella/Excess Coverage. Umbrella liability coverage of \$5 million per occurrence and per event aggregate shall sit above the Workers' Compensation, Commercial General Liability, and Automobile liability policies.

Client shall be granted additional insured status (or Loss Payee status under Crime policy) via a blanket endorsement for applicable policies. Upon Client's written request, RSM will provide Client with a certificate or certificates of insurance evidencing proof of coverage for the above-referenced policies. RSM's insurers maintain an A.M. Best's rating of at least A-/VII.

11. General Provisions

11.1. Transfer or Assignment. Neither this Agreement nor any other obligations of a Party under this Agreement may be assigned or delegated by a Party without the written consent of the other Party, which shall not be unreasonably withheld. Written consent shall be deemed to have been received for a Party's assignment of this Agreement to any acquirer of, or successor to, all or substantially all of its assets or ownership interests, provided that such Party provides the other Party with not less than ten (10) business days advance written notice of such assignment and such other Party does not raise good faith objections to such assignment within ten (10) business days from the receipt of such notice. Good faith objections include, but are not limited to, assignments that could (i) impair RSM's independence, (ii) create a conflict of interest for RSM with respect to one or more of RSM's clients, (iii) cause either Party to be in breach of its obligations to a third party, or (iv) provide one of a Party's competitors with access to a Party's confidential or proprietary information. Any such transfer or assignment will become effective only if and when the transferee or assignee agrees in writing to be bound by the terms of this Agreement.

11.2. Force Majeure. Neither Party will be responsible for any delay nor failure in performance resulting from acts beyond such Party's reasonable control ("Force Majeure").

Force Majeure will include, but not be limited to, acts of God, government or war, riots or strikes, epidemics, fires, floods, cyberattacks or disasters. At its option, Client may terminate any Statement of Work that is delayed more than sixty (60) days by a Force Majeure event(s); provided, however, that Client is not excused from paying RSM for all Services rendered and Deliverables provided prior to the termination of the Agreement. Force Majeure may not extend any payment obligation by more than fifteen (15) days.

11.3. Publicity. Nothing in this Agreement will provide to RSM any license or other right to use Client's trademarks or service marks except in connection with the provision of the Services. Notwithstanding the foregoing, unless notified otherwise by Client during the term, RSM may include Client's name in any client list that it provides to individual prospective clients for marketing purposes; however, this sentence will not authorize RSM to include Client's name in any advertisements or publications, even as part of a client list.

11.4. Electronic Communications. The Parties acknowledge that they may correspond or convey documentation, including Confidential Information, via various forms of electronic transmission, including, but not limited to, email, FTP and cloud-based sharing and hosting applications, and that neither Party has control over the performance, reliability, availability or security of these electronic transmission methods. Therefore, neither Party will be liable for any loss, damage, expense, harm, disclosure or inconvenience resulting from the loss, delay, interception, corruption, disclosure or alteration of any electronic transmission where the Party has used commercially reasonable efforts to protect such information. RSM offers its clients the opportunity to use a secure internet portal for the

exchange of confidential information using commercially standard encryption protocols. Use of a portal requires acceptance of an end-user agreement that as of the date of this Agreement, can be found at [User Terms and Conditions](#).

11.5. Nonsolicitation. To the fullest extent permitted by Law, during the term of each Statement of Work and for a period of one (1) year following its expiration or termination, neither Party will actively solicit, employ or otherwise engage any of the other Party's partners, principals or employees, including former partners, principals or employees, who were involved in providing or receiving Services under such Statement of Work. In the event that either Party breaches this provision, the breaching Party agrees to pay to the aggrieved Party within thirty (30) days after demand, an amount equal to the greater of \$50,000 or one-hundred percent (100%) of the annual base salary of any such partner, principal or employee. For avoidance of doubt, the foregoing does not prohibit either Party from employing individuals who (i) were not involved in a Statement of Work and (ii) apply for positions in response to public postings, employment advertisements or other general solicitations of employment not targeted at such individuals, whether such applications are during or after the term of this Agreement.

11.6. No Agency. RSM is an independent contractor. Neither Party's partners, principals nor employees will be considered employees of the other Party for any purpose. Nothing in this Agreement shall be construed to create the relationship of principal and agent, employer and employee, partners or joint venturers between RSM and Client, and neither Party has the authority to bind the other Party to any third party.

11.7. No Third-Party Beneficiaries. Neither Party intends that there be any third-party

beneficiaries to this Agreement, except with respect to (i) RSM Network Firms, Affiliates of RSM, and Third-Party Contractors, as provided under Sections 1.4 and 5.4.3 and (ii) Microsoft Corporation, as provided in Exhibit I.

11.8. Notices. Any notice to be given hereunder will be in writing and addressed to the Party and address stated below or such other address as the Party may designate from time to time by written notice. Except as otherwise expressly provided in this Agreement, notices hereunder will be deemed given and effective (i) if personally delivered, upon delivery; (ii) if sent by overnight rapid-delivery service with tracking capabilities, upon receipt; (iii) if sent by facsimile or electronic mail, at such time as the Party that sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered United States mail, upon receipt.

Notice to Client will be sent to the address provided in this Master Services Agreement, or applicable Statement of Work.

Notice to RSM will be sent to Office of the General Counsel, RSM US LLP, 200 South Wacker Drive, Suite 3900, Chicago, IL 60606.

11.9. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of South Dakota, without regard to the conflicts of laws or principles thereof, and applicable U.S. federal law. Any and all disputes, claims or litigation arising from or related in any way to the Services, Client Deliverables, RSM Work Product, RSM Information or this Agreement, or any provisions herein, will be resolved exclusively in the state and federal courts located therein. The Parties hereby waive any objections against and expressly agree to

submit to the personal jurisdiction and venue of such state or federal courts.

11.10. Time to Bring Claims. No claim or action by either Party, regardless of whether the claim is in contract, in tort, at law or in equity, arising out of or relating to any matter under this Agreement, may be brought by either Party more than twenty-four (24) months after the Party first knows or has reason to know that the claim or cause of action has accrued, but in no event more than thirty-six (36) months following the completion of the Services under the applicable Statement of Work. This Section 11.10 may shorten, but in no event will it extend, any period of limitation on actions otherwise provided by applicable Law.

11.11. Legal Action Requiring Disclosure. In the event RSM is requested or authorized by Client or is required by regulation, Law, subpoena or other legal process to produce its documents or its personnel as witnesses with respect to its Services for Client, Client will, so long as RSM is not a Party to the proceeding in which the information is sought, reimburse RSM for its professional time and expenses, including the reasonable fees and expenses of counsel, incurred in responding to such requests.

11.12. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument executed by both Parties.

11.13. Equal Opportunity Employer of Protected Veterans and Individuals with Disabilities. The Parties hereto shall abide by the requirements of 41 CFR 60-1.4(a), 60-

300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, gender identity, sexual orientation, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment, qualified individuals without regard to race, color, religion, sex, gender identity, sexual orientation, national origin, protected veteran status or disability.

11.14. Miscellaneous. No delay or omission by either Party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by either Party on any one occasion will be effective only in that instance and will not be construed as a bar or waiver of any right on any other occasion. If any provision of this Agreement is found to be invalid by any court or arbitrator having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions.

11.15. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which taken together will constitute one and the same instrument. Each Party hereto agrees that any electronic signature of a Party to this Agreement or any electronic signature to a document contemplated hereby (including any representation letter) is intended to authenticate such writing and shall be as valid, and have the same force and effect as a manual signature. Any such electronically signed document shall be deemed (i) to be "written" or "in writing"; (ii) to

have been signed; and (iii) to constitute a record established and maintained in the ordinary course of business, and an original written record when printed from electronic files. Each Party hereto also agrees that electronic delivery of a signature to any such document (via email or otherwise) shall be as effective as manual delivery of a manual signature. For purposes hereof, "electronic signature" includes, but is not limited to (i) a scanned copy (as a "pdf" (portable document format) or other replicating image) of a manual ink signature, (ii) an electronic copy of a traditional signature affixed to a document, (iii) a signature incorporated into a document utilizing touchscreen capabilities, or (iv) a digital signature.

11.16. No Disparagement. Neither Party, nor any of its respective partners, principals, shareholders, members, officers, directors, employees, Affiliates, subsidiaries, agents or representatives, shall initiate or participate in any action or conduct tending to injure, bring into disrepute, ridicule, damage or destroy the goodwill of the other Party or the other Party's Affiliates. The foregoing shall not be construed to prevent or prohibit a Party, or any of its respective partners, principals, shareholders, members, officers, directors, employees, Affiliates, subsidiaries, agents or representatives from (i) exercising its rights under this Agreement; (ii) complying with a legal obligation or a professional responsibility; or (iii) reporting, providing or disclosing information to federal, state, municipal or local government agencies, authorities or officials in the ordinary course of business or as required by Law. Further, in the event a Party or any of its respective partners, principals, shareholders, members, officers, directors, employees, Affiliates, subsidiaries, agents or representatives breach this Section 11.16, the non-breaching Party and its respective partners,

principals, shareholders, members, officers, directors, employees, Affiliates, subsidiaries, agents and representatives shall no longer be bound by the obligations set forth under this Section 11.16.

11.17. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.18. Neutral Interpretation. This Agreement constitutes the product of the negotiation of the parties hereto and the enforcement hereof shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship hereof.

**The balance of this page is intentionally left blank.
Acknowledgement and Acceptance follow.**

Acknowledgement and Acceptance

EACH PARTY HAS READ AND AGREES TO THE TERMS AND CONDITIONS INCLUDED HEREIN (INCLUDING EXHIBIT I, MICROSOFT PRODUCT RIDER). EACH PARTY AND ITS SIGNATORIES BELOW REPRESENT THAT SAID SIGNATORY HAS THE REQUISITE POWER AND AUTHORITY TO BIND EACH RESPECTIVE PARTY TO THE UNDERTAKINGS AND OBLIGATIONS CONTAINED HEREIN.

AGREED TO AND ACKNOWLEDGED BY:

RSM US LLP

By: Cyndi Mergele
Name: Cyndi Mergele
Title: Senior Director
Date: June 12, 2019

The City of Rapid City

By: _____
Name: _____
Title: _____
Date: _____
Email: _____
Phone: _____
FEIN/Tax ID: _____

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Options to return signed contract:
1. DocuSign
2. Email: crcpurchasing@rsmus.com
3. Fax: 877 281 9587
4. Mail: RSM US LLP, Attn: Client Resource Center, 201 First Street SE, Suite 800, Cedar Rapids, IA 52401

EXHIBIT I
MICROSOFT PRODUCT RIDER

1. The Microsoft Product (the term "Product" is defined in the Customer Agreement link below) is being provided to Client by Microsoft either under a resale agreement between RSM or its Affiliate and Microsoft, or an agreement between Client and Microsoft ("Enterprise Agreement"), each of which requires Client to acknowledge and agree, without exception, to Microsoft's customary cloud services terms, which provide, among other things, for limited warranty responsibilities and disclaimers of certain responsibilities and liability.
2. Client hereby accepts and agrees to adhere to and be bound by, and acknowledges that it has reviewed or had an opportunity to review, the "Customer Agreement" available at http://download.microsoft.com/download/2/C/8/2C8CAC17-FCE7-4F51-9556-4D77C7022DF5/MCA2017Agr_NA_ENG_Sep2017_CR.pdf, or its Enterprise Agreement with Microsoft, in each case including Microsoft's Online Services Terms and Product Terms (together, the "Online Services Terms") available at <http://go.microsoft.com/?linkid=9840733>, and Microsoft's Service Level Agreement ("Microsoft SLA") available at <http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentType=37>. Client further acknowledges and hereby agrees that it will ensure that all permitted users of the Microsoft Product agree to and will abide by all terms set forth in (i) the Customer Agreement or Enterprise Agreement, whichever is applicable; (ii) the Online Services Terms; and (iii) the Microsoft SLA. For purposes of clarity and to avoid any doubt, Client is solely responsible and liable for any use of the Microsoft Product by its employees and contractors.
3. To the extent Microsoft updates or modifies the Customer Agreement or Enterprise Agreement, whether or not Client has had an opportunity to review, or has received a copy from RSM or Microsoft of such updated or modified Customer Agreement or Enterprise Agreement, Client acknowledges and hereby agrees that it will accept, adhere to, and be bound by such updated or modified Customer Agreement or Enterprise Agreement at or before renewal of its Subscription (as such term is defined in the Customer Agreement or Enterprise Agreement) for the Microsoft Product, and it will ensure that all permitted users of the Microsoft Product abide by all such terms. To the extent Microsoft notifies RSM of an update or modification to the Customer Agreement, RSM will in turn, notify Client of the same.
4. Client acknowledges and hereby agrees that it (i) is solely responsible for reviewing and complying with the Online Services Terms along with any changes thereto by Microsoft during the term of Client's Subscription (as such term is defined in the Customer Agreement) to the Microsoft Product, and (ii) will ensure that all permitted users of the Microsoft Product abide by all such terms.
5. Upon renewal of a Subscription, in addition to accepting and agreeing to adhere to and be bound by any modifications or updates to the then applicable Customer Agreement or Enterprise Agreement, Client acknowledges and hereby agrees to be bound by the

version of the applicable Microsoft SLA for the Microsoft Product that is current at the time of the renewal of such Subscription. Except where Client has entered into an Enterprise Agreement with Microsoft, Client further acknowledges that the Subscription to a Microsoft Product will automatically renew at the end of any term unless Client provides RSM with written notice at least thirty (30) days prior to the end of such Subscription term that it wishes to cancel the Subscription.

6. Except where Client has entered into an Enterprise Agreement with Microsoft, Client acknowledges that the Microsoft Product along with the Subscription thereto shall be ordered through and invoiced by RSM or its Affiliate and any fees associated therewith shall be paid by Client solely to RSM or its Affiliate.
7. In the event Client's Subscription is based on actual usage in the preceding month, Client acknowledges that the price of the Subscription for the Microsoft Product is subject to increase during the Subscription term. Except where Client has entered into an Enterprise Agreement with Microsoft, RSM will provide Client with thirty (30) days' prior written notice (an email will be sufficient) of an increase in the price of the Subscription. To the extent Client does not agree to pay such increase in the Subscription price, Client must provide written notice to RSM within thirty (30) days of notice of such increase. Upon receipt of such notice, RSM will cancel Client's Subscription.
8. Client acknowledges that Microsoft may, in its sole and absolute discretion, and for any reason and at any time (i) modify or release a new version of the Microsoft Product including, without limitation, hot fixes,

platform updates, knowledge-based articles, and application updates, and require that Client integrate such modification or new release at such time, (ii) add new features or functionality to the Microsoft Product, and/or (iii) remove an existing feature or functionality of the Microsoft Product. Client acknowledges that any of the foregoing may delay, extend and/or increase the cost of RSM's Services under a Statement of Work. Client also hereby acknowledges and understands that Microsoft may, in its sole and absolute discretion, refuse to conduct business with Client or provide Client with the specific Microsoft Product requested.

9. Client acknowledges and hereby agrees that such Microsoft Product is owned, provided, licensed, hosted, managed, monitored and supported (except for those Services which are provided directly by RSM as provided by an applicable Statement of Work) by Microsoft. Client further acknowledges that usage of the Microsoft Product involves the movement and storage of Client's data solely within Microsoft's infrastructure and not RSM's, and that the Customer Agreement or Enterprise Agreement, whichever applicable, along with the Online Services Terms and Microsoft SLA, govern all obligations relating to data privacy, storage, recovery, security, protection and processing, as well as the service levels, associated with the Microsoft Product.
10. Client acknowledges and hereby agrees that its remedies with respect to the Microsoft Product will be limited to whatever recourse may be available, and is subject to all restrictions and other limitations as may be set forth, in the Customer Agreement or Enterprise Agreement (whichever

applicable), the Online Services Terms, and the Microsoft SLA.

11. In the event an invoice for a Microsoft Product resold by RSM or its Affiliate to Client is thirty (30) days past due, in addition to any other remedies available to it at Law or in equity, upon written notice to Client, RSM may suspend or terminate Client's usage of, access to, and the services provided to Client by, the Microsoft Product. RSM will not be liable for any resulting loss, damage or expense connected with such suspension or termination, including, but not limited to, any loss of information or data stored on such Microsoft Product.
12. RSM shall be, and Client shall maintain RSM as, Client's "partner of record" with Microsoft. Except where Client has entered into an Enterprise Agreement with Microsoft, RSM shall be Client's primary point of contact for the Microsoft Product and Client shall direct any and all operational and technical issues, requests for support and questions regarding the Microsoft Product to RSM. In the event RSM is providing support Services in connection with the Microsoft Product and the applicable Statement of Work, Change Order, or purchase order does not reference RSM's support policies, hours or service levels, RSM's support hours and service levels are available at <http://rsmus.com/what-we-do/services/technology/microsoft-solutions/rsm-client-resource-center.html>. RSM's service level commitments are separate and distinct from the service level commitments promised by Microsoft to Client in Microsoft's SLA. In no event shall RSM be held responsible or liable to Client, or its

partners, principals, shareholders, members, directors, officers, employees, Affiliates, subsidiaries, subcontractors, contractors, agents, successors or assigns, for any of the following: (i) Microsoft's failure to maintain its service level commitments as set forth in Microsoft's SLA; (ii) Client's failure to timely and/or properly make a claim for a credit for Microsoft's failure to maintain its service level commitments; (iii) Microsoft's processing or handling of Client's claim for a credit for Microsoft's failure to maintain its service level commitments, including the timing of Microsoft's decision with respect to such a claim; (iv) Microsoft's decision whether to issue Client a credit and the amount of such credit; (v) the timing of Microsoft's response to an incident which requires Microsoft's assistance; and (vi) any losses or damages associated with Microsoft's delay in responding to or resolving an incident for which its assistance is required.

13. Microsoft is an intended third-party beneficiary to this Microsoft Product Rider **solely** insofar as is necessary for Microsoft to enforce the terms set forth in the Customer Agreement vis-à-vis the Client. Nothing herein, however, shall grant Client the right to enforce any term of this Microsoft Product Rider against Microsoft. Client's sole rights and remedies against Microsoft are set forth in the Customer Agreement.
14. Any terms used, but not otherwise defined herein, shall have the same meaning given to such term in the Agreement.