



**COMMONWEALTH OF VIRGINIA  
STANDARD CONTRACT**

Contract No. UCPJMU4798

This contract entered into this 30th day of March 2017, by **Accruent, LLC** hereinafter called the "Contractor" and Commonwealth of Virginia, James Madison University called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

**SCOPE OF CONTRACT:** The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

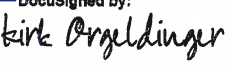
**PERIOD OF PERFORMANCE:** From April 1, 2017 through March 31, 2018 with nine (9) one-year renewal options.


The contract documents shall consist of:

- (1) This signed form;
- (2) Scope of Services and Pricing;
- (3) The Commonwealth of Virginia Agency Contract Form Addendum to Contractor's Form;
- (4) The Special Terms and Conditions;
- (5) The General Terms and Conditions;
- (6) Accruent SaaS Agreement;

All of which are incorporated herein by reference. In the event of any conflict between the terms and conditions of any of the above documents, the order of precedence to resolve such conflict shall be the same as the document order set forth above.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

**CONTRACTOR:**  
By:   
DocuSigned by:  
47E04D7BB1284D9  
(Signature)  
Kirk Orgeldinger  
(Printed Name)  
Title: VP of Finance

**PURCHASING AGENCY:**  
By:   
(Signature)  
Lee Anne Beatty Smith  
(Printed Name)  
Title: Buyer Senior, Jmu

## SCOPE OF SERVICES AND PRICING

- A. The Contractor shall offer VFA.facility/FICAS software, additional modules, support and maintenance, and services to all Commonwealth of Virginia agencies and institutions (*public and private*) that are current users of VFA.facility/FICAS software. All new users must procure VFA.facility at an institution/agency level prior to obtaining access to this contract.
- B. James Madison University is the sponsoring agency and will administer the contract on behalf of all users.
- C. COOPERATIVE PURCHASING/USE OF AGREEMENT BY THIRD PARTIES: Any Commonwealth of Virginia public body (*to include government/state agencies, political subdivisions, etc.*), cooperative purchasing organizations, public or private health or private educational institutions, or any University related foundation and affiliated corporations may access this contract provided that the agency or institution are already current users of the VFA.facility/FICAS software.

Participation is strictly voluntary. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor and shall fully and independently administer its use of the contract to include contractual disputes, invoicing and payments without direct administration from the sponsoring agency. No modification of this contract is required to participate. The participating entity and the Contractor may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modifications will apply solely between the participating entity and the Contractor.

The Contractor will notify James Madison University ("the Purchasing Agency") in writing and provide semi-annual usage reports for all entities accessing the contract. James Madison University shall not be held liable for any costs or damages incurred by any other participating entity as a result of using this contract. It is understood and agreed that James Madison University is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as needed. The following Institutions shall immediately have access to this contract:

James Madison University  
William & Mary  
Old Dominion University  
Radford University  
Virginia Commonwealth University  
Virginia Polytechnic Institute and State University  
Virginia Military Institute  
Virginia Community College System  
George Mason University  
University of Mary Washington  
Virginia Department of Corrections  
Longwood University  
Virginia State University

- D. Contractor is responsible for assigning a primary point of contact at their firm that will be responsible for managing this contract. Contractor is responsible for providing the contact information of this

person to all entities using this contract and shall promptly update entities with changes to this assignment.

E. **VFA.facility SaaS Annual Subscription (includes unlimited users)**

1. First Year Pricing

**James Madison University**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 7,000,000 square feet
<b>Annual Fee – Year 1</b>	\$6,600.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**William & Mary**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 4,500,000 square feet
<b>Annual Fee – Year 1</b>	\$7,392.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Radford University**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 3,000,000 square feet
<b>Annual Fee – Year 1</b>	\$1,848.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Virginia Commonwealth University**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 8,500,000 square feet
<b>Annual Fee – Year 1</b>	\$5,544.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Virginia Tech**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 12,000,000 square feet
<b>Annual Fee – Year 1</b>	\$7,392.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Longwood University**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 3,500,000 square feet
<b>Annual Fee – Year 1</b>	\$1848.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**VA Department of Corrections**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 10,000,000 square feet
<b>Annual Fee – Year 1</b>	\$30,900.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Virginia State University**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 3,500,000 square feet
<b>Annual Fee – Year 1</b>	\$3,696.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Virginia Military Institute**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 3,500,000 square feet

<b>Annual Fee – Year 1</b>	\$1,848.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Virginia Community College System**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 10,000,000 square feet
<b>Annual Fee – Year 1</b>	\$9,240.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**George Mason University**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 9,500,000 square feet
<b>Annual Fee – Year 1</b>	\$3,696.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**University of Mary Washington**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 3,000,000 square feet
<b>Annual Fee – Year 1</b>	\$3,696.00
<b>Term</b>	July 1, 2017 – June 30, 2018

**Old Dominion University**

<b>Licensed Modules</b>	VFA.Facility
<b>Licensed Metric</b>	Includes usage up to 6,000,000 square feet
<b>Annual Fee – Year 1</b>	\$1,848.00
<b>Term</b>	July 1, 2017 – June 30, 2018

2. Renewal Pricing:

- a. Annual renewal increases shall not exceed 12%
- b. Annual pricing shall not exceed 50% off the current list price

F. VFA.auditor module:

1. Pricing:

- a. \$.005/sf for the first 1,000,000 of building square feet assessed within the system for a given year. For the purpose of clarification, multiple surveys completed within the system for the same building annually will not count more than once toward the total annual amount of building square feet.
  - b. \$.004/sf for each sf over 1,000,000 assessed within the system for a given year. For the purpose of clarification, multiple surveys completed within the system for the same building annually will not count more than once toward the total annual amount of building square feet.
  - c. Will be invoiced annually in advance based on estimates provided by each institution. In the event that the institution goes over the estimated amount, Contractor reserves the right to invoice for overages in accordance with contracted pricing.
2. Current VFA.auditor subscribers (*at the time of contract signing*) have the option of paying their current annual rate plus a 5% annual increase for the first year of the contract. Subsequent annual renewal increases shall not exceed 5%.

G. Training:

1.

VFA.facility Training via Webex	Duration (Days)	Per User via Webex	Onsite per Session
2-Day Class: Asset Data and Capital Planning & Budgeting	2	\$1,300	\$7,500
Add Report Author	1	\$650	\$3,750
Add Report Center	1	\$650	\$3,750
Add Advanced Reporting and Funding	1	\$650	\$3,750
<b>VFA.auditor Training via Webex</b>			
Regularly Scheduled End-user Training via WebEx	1	\$650	\$3,750
Module 2 - Administrator Training via WebEx	3	\$2,000	\$11,250

2. Travel for onsite training shall be in accordance with the U.S. General Services Administration (GSA) rates located at <http://www.gsa.gov/portal/content/104877>

**H. Professional Services:**

1. Professional Services shall include all entity-requested additional services that fall outside of the support and maintenance provided through an annual SaaS subscription. Services include, but are not limited to, configuration, integration, and project management.
2. Contractor shall provide a quote for entity-requested professional services in accordance with contract pricing.
3. The requesting entity shall issue a purchase order in accordance with the quote that will authorize the Contractor to proceed with work. No work shall be completed by the Contractor without a purchase order.
4. Professional Services hourly rate shall not exceed \$175.
5. Data Transfer Pricing: Entities may elect to move data currently within the system to their own instance at no additional cost. Entities may elect to move data currently within the system to their own instance **and** move to the top level within the system hierarchy for a one (1) time cost of \$700 (4 hours x \$175).
6. Travel associated with providing onsite Professional Services shall be in accordance with the U.S. General Services Administration (GSA) rates located at <http://www.gsa.gov/portal/content/104877>

- I. Credit Card Processing Fees:** There shall be no credit card processing fees.

**COMMONWEALTH OF VIRGINIA AGENCY  
CONTRACT FORM ADDENDUM TO CONTRACTOR'S FORM**

**AGENCY NAME:** James Madison University

**CONTRACTOR NAME:** Accruent, LLC

The Commonwealth and the Contractor are this day entering into a contract and, for their mutual convenience, the parties are using the standard form agreement provided by the Contractor. This addendum, duly executed by the parties, is attached to and hereby made a part of the contract. In the event that the Vendor enters into terms of use agreements or other agreements or understanding with University employees and students (whether electronic, click-through, verbal, or in writing), the terms and conditions of this Agreement shall prevail.

The Contractor represents and warrants that it is a(n) // individual proprietorship // association // partnership / / corporation // governmental agency or authority authorized to do in Virginia the business provided for in this contract. (Check the appropriate box.)

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by the Commonwealth for all goods, services and other deliverables under this contract shall not exceed Purchase Order Amounts; payments will be made only upon receipt of a proper invoice, detailing the goods/services provided and submitted to the Purchasing Agency. The total cumulative liability of the Commonwealth, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. In its performance under this contract, the Contractor acts and will act as an independent contractor, and not as an agent or employee of the Commonwealth.

The Contractor's form contract is, with the exceptions noted herein, acceptable to the Commonwealth. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by the Commonwealth, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, none of the following paragraphs **1 through 17** shall have any effect or be enforceable against the Commonwealth:

1. **Requiring the Commonwealth to maintain any type of insurance either for the Commonwealth's benefit or for the contractor's benefit;**
2. **Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;**
3. **Requiring or stating that the terms of the attached Contractor's form agreement shall prevail over the terms of this addendum in the event of conflict;**
4. **Requiring the Commonwealth to indemnify or to hold harmless the Contractor for any act or omission;**
5. **Imposing interest charges contrary to that specified by the Code of Virginia, §2.2-4347 through 2.2-4354, Prompt Payment;**
6. **Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in the courts of any state other than Virginia;**
7. **Requiring any total or partial compensation or payment for lost profit or liquidated damages by the Commonwealth if the contract is terminated before its ordinary period;**
8. **Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of the Commonwealth before the contract is considered in**



**effect;**

- 9. Delaying the acceptance of this contract or its effective date beyond the date of execution;**
- 10. Limiting or adding to the time period within which claims can be made or actions can be brought;**
- 11. Limiting the liability of the Contractor for property damage or personal injury. The parties agree that this clause does not extend the Contractor's liability beyond its own acts or those of its agents/employees;**
- 12. Permitting unilateral modification of this contract by the Contractor;**
- 13. Binding the Commonwealth to any arbitration or to the decision of any arbitration board, commission, panel or other entity;**
- 14. Obligating the Commonwealth to pay costs of collection or attorney's fees;**
- 15. Granting the Contractor a security interest in property of the Commonwealth;**
- 16. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned agency representative to bestow or incur on behalf of the Commonwealth.**
- 17. Requiring the Contract to be kept confidential or that pricing/fees be kept confidential.**

This contract has been reviewed by staff of the agency. Its substantive terms are appropriate to the needs of the agency and sufficient funds have been allocated for its performance by the agency. This contract is subject to appropriations by the Virginia General Assembly.

## **SPECIAL TERMS AND CONDITIONS**

- A. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. **SUBMISSION OF INVOICES/PAYMENTS:** All invoices shall be submitted within sixty days of contract term expiration for the initial contract period as well as for each subsequent contract renewal period. If requested by the institution or agency, the Contractor shall accept electronic payments (*ACH*).
- C. **OPERATING VEHICLES AT PARTICIPATING INSTITUTIONS AND AGENCIES' LOCATION:** Operating vehicles on sidewalks, plazas, and areas heavily used by pedestrians is prohibited. In the unlikely event a driver should find it necessary to drive on sidewalks, plazas, and areas heavily used by pedestrians, the driver must yield to pedestrians. Accordingly, violators may be charged.
- D. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
1. It is the goal of the Commonwealth that 40% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All Contractors are required to submit a Small Business Subcontracting Plan. Unless the Contractor is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No Contractor or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE). If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number or FEIN, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided. This information shall be submitted to each participating institution or agency as requested.
  2. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution with every request for payment, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. This information shall be submitted to each participating institution or agency as requested. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number or FEIN number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
  3. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution with every request for payment, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, FEIN number, total dollar amount subcontracted, and type of product or service provided. This information shall be submitted to each participating institution or agency as requested.
- E. **ADDITIONAL GOODS AND SERVICES:** Participating institutions and agencies may acquire other goods or services that the supplier provides than those specifically solicited. Participating institutions and agencies reserves the right, subject to mutual agreement, for the Contractor to provide additional goods and/or services

under the same pricing, terms, and conditions. Such additional goods and services may include other products, components, accessories, subsystems, or related services that are newly introduced during the term of this Agreement.

- F. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- G. **CRIMINAL BACKGROUND CHECKS OF PERSONNEL ASSIGNED BY CONTRACTOR TO PERFORM WORK ON THE PROPERTY OF PARTICIPATING INSTITUTIONS OR AGENCIES:** The Contractor shall obtain criminal background checks on all of their contracted employees who will be assigned to perform services on the property of a participating institution or agency. The results of the background checks will be directed solely to the Contractor. The Contractor bears responsibility for confirming to the participating institution or agency's contract administrator that the background checks have been completed prior to work being performed by their employees or subcontractors. The Contractor shall only assign onsite work to those individuals whom it deems qualified and permissible based on the results of completed background checks. Notwithstanding any other provision herein, and to ensure the safety of students, faculty, staff and facilities, the participating institution or agency reserves the right to approve or disapprove any contract employee that will work onsite. Disapproval by a participating institution or agency will solely apply to that institution or agency's property.
- H. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- I. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- J. **DEFINTION SOFTWARE:** As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.
- K. **PUBLIC POSTING OF COOPERATIVE CONTRACTS:** James Madison University maintains a web-based contracts database with a public gateway access. This contract will be posted to the publicly accessible website. Contents identified as proprietary information will not be made public.
- L. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate annual subscription charges to account for each full day of in operability. The period of in operability shall commence upon initial notification.
- M. **LATEST SOFTWARE VERSION:** Any software product(s) provided under this contract shall be the latest version available to the general public.
- N. **THIRD PARTY ACQUISITION OF SOFTWARE:** The Contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The

Contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, should not be affected by the acquisition. Prior to completion of the acquisition, the Contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract if possible.

- O. **TITLE TO SOFTWARE:** The Contractor represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights within this contract, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- P. **WARRANTY AGAINST SHUTDOWN DEVICES:** The Contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software. The Contractor warrants it utilizes the most current, general-release, industry-standard virus protection software.
- Q. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The Contractor assures that information and data obtained as to personal facts and circumstances related to faculty, staff, students, and affiliates will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
- R. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for a period of nine (9) successive one year periods under the terms and conditions of the original contract. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

## **GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES**

- A. **PURCHASING MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available for review at the purchasing office. In addition, the manual may be accessed electronically at <http://www.jmu.edu/procurement> or a copy can be obtained by calling Procurement Services at (540) 568-3145.
- B. **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
- C. **ANTI-DISCRIMINATION:** By entering into this contract, the Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §10 of the Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 (available for review at <http://www.jmu.edu/procurement>). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*§6 of the Rules Governing Procurement*),

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
    - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By entering into this contract, the Contractor certifies that they have acted into without collusion or fraud and that they have not offered or received any kickbacks or inducements from any supplier, manufacturer or subcontractor in connection with this contract and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the

performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

- F. **DEBARMENT STATUS:** Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this contract, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 § 53; available for review at <http://www.jmu.edu/procurement>*).

2. **To Subcontractors:**

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
  3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
  4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- I. **PRECEDENCE OF TERMS:** Paragraphs A through H of these General Terms and Conditions and the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors, shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- J. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- K. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
  1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for



performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- L. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- M. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- N. **INSURANCE:** The contractor certifies that it will maintain the following insurance coverage throughout the term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with § 25 of the Rules Governing Procurement – Chapter 2, Exhibit J, Attachment 1, and 65.2-800 et. Seq. of the Code of Virginia (available for review at <http://www.jmu.edu/procurement>)

**MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

1. **Workers' Compensation** - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
  2. **Employer's Liability** - \$100,000.
  3. **Commercial General Liability** - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- O. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- P. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors



to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution by completing the free eVA Vendor Registration. All contractors must register in eVA and pay the Vendor Transaction Fees specified below.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
  - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
  - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

For orders issued prior to July 1, 2014 the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Q. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- R. **E-VERIFY REQUIREMENT OF ANY CONTRACTOR:** Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with James Madison University to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to any awarded contract.

## ACCRUENT SaaS AGREEMENT

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

**"Accruent Software"**: each Accruent-developed and/or Accruent-owned software product in machine readable object code (not source code), the Documentation for such product, and any updates thereto.

**"Affiliate"**: an entity specified in an applicable Order Document, which is controlling, controlled by or under common control with Client where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all the voting power of the shares (or other securities or rights) entitled to vote for the election of directors or other governing authority.

**"Agreement"**: this document and any associated Order Documents and SOW's (defined in section 3.1).

**"CBT Modules"**: those certain computer based training modules listed on the applicable Order Document.

**"Client Data"**: any data and information that Client provides, generates, transfers or makes available to Accruent under this Agreement in any format.

**"Content"**: any information, data, text, software, music, sound, photographs, graphics, video messages or other material to which Client is provided access through the SaaS Services.

**"Documentation"**: the user instructions, release notes, manuals and on-line help files in the form generally made available by Accruent, regarding the use of the applicable Software.

**"Hands-on-Lab or HoL"**: those certain online training sessions hosted by Accruent as listed on the applicable Order Document.

**"License Metrics"**: the limitation on the usage of each of the SaaS Services set out in the applicable Order Document by a term such as number of leases, square footage, number of locations, reports.

**"Malicious Code"**: computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**"Named User"**: a Client or Affiliate employee who is identified as the individual authorized by Client or Affiliate to access and use the CBT Modules or HoL with a single log-in, regardless of whether the Named User is actively using the CBT, at any given time either on a subscription, one-time or per HoL session basis, as set out in the applicable Order Document.

**"Order Document"** means the document(s), regardless of its actual name, executed by the parties which incorporates by reference the terms of the Agreement, and describes Client's order-specific information, such as description of the SaaS Services ordered, license scope, use and restrictions, fees.

**"Professional Services"**: data conversion, implementation, site planning, configuration, integration and deployment of the SaaS Services, training, project management and other consulting services.

**"SaaS Services"**: the provision of the Software as a service which is hosted by Accruent or its hosting providers and which is accessed by Client via the internet.

**"Software"**: the Accruent Software and Third Party Software.

**"Support"**: the support services for the SaaS Services which are provided under Accruent's Support Policies (as may be amended by Accruent from time to time) in effect at the time the SaaS Services are provided. For the avoidance of doubt, Support excludes Professional Services and excludes Training Services. Support shall include, at a minimum, 1) Software Updates- Updates are subsequent releases to the subscribed software that Accruent makes available to current SaaS subscribers. Updates include major and minor subsequent releases of the software, service packs, hot fixes, or error corrections, as well as software documentation updates. Updates do not include optional, additional, or future products that Accruent licenses separately and 2) Technical Support- Technical support consists of remote assistance with support requests and includes portal, email, and phone support during standard business hours. Accruent's standard business hours are 8AM – 8PM EST, except for holidays observed by Accruent. Technical support is provided for problems that are demonstrable in the current and supported Accruent releases, running unaltered on an appropriate hardware and operating system configuration as specified in Accruent documentation. Accruent will only be obligated to provide support for the software as delivered by Accruent. Accruent will have no obligation to provide Maintenance for any software that has been altered or modified by any party, other than Accruent.

**"Third Party EULA" or "EULA"**: the end user license agreement that accompanies the Third Party Software, is appended to the Order Document or is otherwise published by the third party supplier, and which governs the use of or access by Client to the applicable Third Party Software.

**"Third Party Software"**: software in object code form, including Documentation and updates, owned by an entity other than Accruent which are to be provided to Client by Accruent on a pass-through, reseller or OEM basis.

**"Training Services"**: computer based training using the CBT Modules, Hands-on-Lab or other customer training as set out in the applicable Order Document which may be purchased on a one-time, subscription or HoL session basis.

### 2. SAAS SERVICES & ONLINE TRAINING SERVICES

**2.1 Grant of Use: SaaS Services.** Subject to the terms of this Agreement, Accruent grants to Client and its Affiliates, for the Initial Term and each Renewal Term (defined in Section 11.1), the non-exclusive, non-assignable right to access and use the SaaS Services, for Client's and Affiliates internal business purposes. SaaS Services purchased may be accessed by or used to manage the number of License Metrics specified in the Order Document. Additional License Metrics may be purchased under an additional Order Document at the pricing in effect at the time the additional License Metrics are added, prorated for the remainder of the then-current Term. The added License Metrics shall have the same term as the then applicable Term. Fees are based on SaaS Services and License Metrics purchased and not actual usage.

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**2.2 Grant of Use: Training Services.** Subject to the terms of this Agreement, Accruent grants to Client and its Affiliates, the non-exclusive, non-assignable right to access and use the CBT Modules or HoL for Client's and Affiliates internal training purposes solely for the number of Named Users as specified in the applicable Order Document. Additional Named Users may be purchased under an additional Order Document at the pricing in effect at the time the additional Named Users are added. Fees are based on Training Services purchased and not actual usage.

**2.3 SaaS Environment.** Client is responsible for obtaining and maintaining at its own expense, all equipment needed to access the SaaS Services, including but not limited to Client's internet access.

**2.4 Service Availability.** Accruent shall use commercially reasonable efforts to make the SaaS Services available 24 hours a day, 7 days a week, except for: (i) planned weekly downtime of which Accruent shall schedule to the extent reasonably practicable from 6:00pm PT Tuesday to 3:00am PT Wednesday (Accruent shall endeavor to give at least 8 hours notice via the SaaS Services), or (ii) planned monthly downtime (of which Accruent shall endeavor to give at least 5 days advance notice) one weekend per month between 6:00 pm PT Friday to 3:00 am PT Monday; (iii) emergency downtime (which Accruent shall use reasonable efforts to provide advance notice); (iv) any unavailability caused by circumstances beyond Accruent's reasonable control, including without limitation, Force Majeure Events, or Internet service provider failures or delays.

Client acknowledges that Accruent does not control the transfer of data over telecommunications facilities, including the Internet. Accruent does not warrant secure operation of the SaaS Services or that it will be able to prevent third party disruptions of such Services. Client acknowledges further that the SaaS Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Accruent is not responsible for any delays, delivery failures, or other damage resulting from such problems.

**2.5 Support Services.** Subject to Client's payment of applicable SaaS Services fees, Accruent will provide to Client the Support services.

**2.6 Training Services.** Subject to Client's payment of applicable Training Services fees, Accruent will provide to Client the Training Services as set out in an applicable Order Document.

**2.7 Backups and Restoration Services.** Provided Client is not otherwise in breach of the Agreement, Accruent will provide backup copies and/or database restoration, upon written request and subject to Client's payment of applicable fees for such service (a then-current fee schedule will be provided upon request).

**2.8 Passwords; Security.** Client is responsible for (i) maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized user and (ii) any and all activities that occur under Client's account. Client agrees to immediately notify Accruent of any unauthorized use of Client's account or any other breach of security known to Client. Accruent shall have no liability for any loss or damage arising from Client's failure to comply with these requirements. Accruent will maintain Client passwords as confidential and will not disclose them to third parties.

**2.9 Client Data.** Client shall be responsible for the accuracy, quality, integrity and legality of Client Data and of the means by which it acquired Client Data.

**2.10 Acceptable Use.** Client acknowledges and agrees that Accruent does not monitor or police the content of communications or data of Client or its users transmitted through the SaaS Services and/or Training Services, and that Accruent shall not be responsible for the content of any such communications or transmissions. Client shall use the SaaS Services and Training Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client agrees not to post or upload any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) contains Malicious Code; (iii) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (iv) otherwise violates any applicable law. Client further agrees not to interfere or disrupt networks connected to the SaaS Services and/or Training Services, not to interfere with another entity's use and enjoyment of similar services and to comply with all regulations, policies and procedures of networks connected to the SaaS Services and/or Training Services. Accruent may remove any violating content posted on the SaaS Services and/or Training Services or transmitted through the SaaS Services or Training Services, without notice to Client. Accruent may suspend or terminate any user's access to the SaaS Services and/or Training Services upon notice in the event that Accruent reasonably determines that such user has violated the terms and conditions of this Agreement.

**2.11 Security.** Accruent will maintain the SaaS Services at either an Accruent location or a reputable third party Internet service provider and hosting facility, where it is subject to commercially reasonable security precautions. Such precautions shall comply with industry standards for the type of information maintained and shall include but not be limited to procedures and measures to prevent unauthorized access to the SaaS Services and unauthorized use of and/or modification of Client Data. However, Client acknowledges that, notwithstanding such security precautions, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the SaaS Services.

**2.12 Disaster Recovery.** Accruent's standard disaster recovery service is included in Client's SaaS Service fees. In the event a disaster is declared Accruent will initiate the Accruent disaster recovery process and shall use commercially reasonable efforts to resume access to Client's environment at Accruent's alternate data center facility in accordance with Accruent's recovery time objectives.

### 3. PROFESSIONAL SERVICES

**3.1 Work Authorizations/Statements of Work.** Accruent will perform the mutually agreed upon services for Client described in one or more work orders, work authorizations or statements of work or Order Documents (collectively "SOW") as the parties may agree to in writing from time to time. Each SOW, once signed by the authorized representatives of each of the parties, shall become a part of the Agreement.

**3.2 Change Orders.** Either party may propose a change order to add to, reduce or change the work ordered in the SOW. Each change order shall specify the change(s) to the services or deliverables, and the effect on the time of performance and on the fees owed to Accruent, due to the change. Once executed by both parties, a change order shall become a part of the SOW.

**3.3 Costs.** Unless otherwise expressly stated in the applicable SOW, Professional Services shall be provided at the hourly contracted rate at the time the Professional Services are performed. If Client wishes the Accruent personnel to perform on Client's site, Client agrees it shall give Accruent at least two (2) weeks' prior notice so Accruent can make appropriate travel arrangements.

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**3.4 Delays/Costs Overruns.** In the event of any delay in Client's performance of any of the obligations set forth herein or any other delays caused by Client, the milestones, fees and date(s) set forth in the SOW may be adjusted on a T&M basis as reasonably necessary to account for such delays, and the adjustment shall be made by change order in accordance with the provisions of section 3.2 (Change Orders) above

**3.5 Responsibility.** Accruent shall be responsible for securing, managing, scheduling, coordinating and supervising Accruent personnel, including its subcontractors, in performing the Professional Services.

**3.6 Cooperation.** Client shall provide Accruent with commercially reasonable cooperation and access to such information, facilities, personnel and equipment as may be reasonably required by Accruent in order to provide the Professional Services. Client acknowledges and agrees that Accruent performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client in connection with the Professional Services. Accruent shall be entitled to rely on all decisions and approvals of Client.

**3.7 Client Data.** Client's data shall be provided to Accruent in a format approved by Accruent or additional charges will apply. Client is responsible for the accuracy and completeness of its information and Client Data. Accruent's performance is dependent on Client's timely provision of accurate and complete resources and information, including but not limited to detailed, precise and clear specifications for any deliverables.

#### 4. FINANCIAL TERMS

**4.1 Fees and Payment Terms.** Fees are specified in the applicable Order Document and unless stated otherwise are denominated and payable in United States dollars. Unless agreed otherwise in an applicable Order Document, fees are due within thirty (30) days of receipt of invoice.

**4.2 Overdue Charges.** In the event any fees are not received by Accruent by the due date, then Accruent may (i) charge interest on past due balances at the lesser of a 1½% per month or the highest rate allowed by law or statute.

**4.3 Suspension of Services and Acceleration.** In the event any amounts are thirty (30) or more days overdue, Accruent may (without limiting any of its other rights and remedies) (i) suspend its performance and (ii) require full payment before any additional performance is rendered by Accruent.

**4.4 Taxes.** Unless expressly provided otherwise, the prices in the Agreement do not include taxes. Client agrees to pay any taxes, other than those based on Accruent's net income, arising out of the Agreement. If Client is tax-exempt, Client agrees to send Accruent a copy of its tax-exempt certificate prior to execution of an Order Document. Client shall be responsible for any amounts incurred by Accruent as a result of Client's failure or delay in paying taxes due.

**4.5 T&E Expenses.** Unless otherwise noted within the Order Document or SOW, Accruent's reasonable travel and lodging expenses incurred by Accruent in the performance of preauthorized Professional Services on Client's site will be billed separately in accordance with the rates established with the U.S. General Services Administration (GSA) rates located at <http://www.gsa.gov/portal/content/104877>.

#### 5. CONFIDENTIALITY

**5.1 Defined.** By virtue of the Agreement, the parties may be exposed to or be provided with certain confidential and proprietary information of the other party or third parties, including but not limited to information designated as confidential in writing or information which ought to be in good faith considered confidential and proprietary to the disclosing party ("**Confidential Information**"). Confidential Information includes, but is not limited, all trade secrets, software, source code, object code, specifications, documentation, business plans, customer lists and customer-related information, financial information, as well as results of testing and benchmarking of the Software or other services, product roadmap, data and other information of Accruent and its licensors relating to or embodied in the Software or Documentation. Accruent's placement of a copyright notice on any portion of any Software will not be construed to mean that such portion has been published and will not derogate from any claim that such portion contains proprietary and confidential information of Accruent.

**5.2 Non-Disclosure.** Each party will protect the other party's Confidential Information from unauthorized dissemination and use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Neither party will use Confidential Information of the other party for purposes other than those necessary to directly further the purposes of the Agreement. Neither party will disclose to third parties Confidential Information without prior written consent of the other party.

**5.3 Exceptions.** Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was in the receiving party's possession before receipt from the disclosing party; (iii) is lawfully obtained from a third party who has the right to make such disclosure; or (iv) has been independently developed by one party without reference to any Confidential Information of the other.

**5.4 Compelled Disclosure.** The receiving party may disclose Confidential Information of the disclosing party if it is compelled by law to do so (including requirements of any freedom of information type acts that Client may be subject to).

#### 6. PRIVACY

Client represents and warrants that before providing personal information to Accruent or its agents, it will comply with any laws applicable to the disclosure of personal information, including providing notices to or obtaining permission from third parties to allow sharing of their personal information with Accruent under the Agreement. No personal information will be disseminated by Accruent to any third parties, except as consented to by Client or required by law.

If Client provides personal data to Accruent from data subjects in Canada or the European Union ("EU"), then Client hereby (a) acknowledges that in connection with the Professional Services and/or SaaS Services, Accruent may transfer/access/store/process personal data outside of the EU and Canada in countries (such as the United States) that under EU laws may not ensure an adequate level of data protection (the "Data Transfer"); and (b) consents to such Data Transfer, and Client shall ensure that it complies with all applicable EU and Canadian laws that apply to Client as the data controller of such personal data in connection with the Data Transfer. Accruent will take reasonable measures to protect the security of such personal data transferred by Client to Accruent.

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## 7. LIMITED RIGHTS AND OWNERSHIP

**"Protected Materials"** as used herein means Software, Content, Professional Services, SaaS Services, Training Services, CBT Modules or Accruent's or its licensors' intellectual property or Confidential Information.

**7.1 Reservation of Rights.** All rights not expressly granted in the Agreement are reserved by Accruent and its licensors. Client acknowledges that: (i) all Software is licensed and not sold and all Content is subscribed to and not sold; (ii) Client acquires only the right to use the Software, Content, or Professional Services and SaaS Services and Accruent, its licensors, and Content providers shall retain sole and exclusive ownership of and all rights, title, and interest in the Protected Materials, including (whether developed by Accruent, Client or a third party) (a) intellectual property embodied or associated with, (b) deliverables and work product associated with, and (c) all copies and derivative works thereof; and (iii) the Protected Materials, including the source and object codes, logic and structure, constitute valuable trade secrets of Accruent and its licensors. Client agrees to secure and protect the Protected Materials consistent with the maintenance of Accruent's and its licensors' rights therein, as set forth in this Agreement.

**7.2 Restrictions.** Client shall not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Protected Materials; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Software, including the license keys, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Protected Materials to any user other than Client's employees who have a need to such access and who shall be bound by a nondisclosure agreement with provisions that are at least as restrictive as the terms of the Agreement; (iv) write or develop any derivative works based upon the Protected Materials; (v) modify, adapt, translate or otherwise make any changes to the Protected Materials or any part thereof; (vi) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Accruent's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Protected Materials; (viii) allow any access or use of the Protected Materials to or by any third party without Accruent's prior written consent for any purpose, including but not limited to outsourcing, installation, upgrade and customization services; or (ix) otherwise use or copy the Protected Materials except as expressly permitted herein.

**7.3 Client Actions.** Client will be responsible for Client's use of the Services in violation of this Agreement, or Client's infringement of the intellectual property rights of a third party.

**7.4 Client Data.** Client retains sole and exclusive ownership to any and all Client Data.

**7.5 License Grant by Client.** Client grants to Accruent a non-exclusive, royalty free license, to use Client Data or other material of Client for the purpose of performing its obligations under the Agreement and in order to generate aggregated, system-wide collations of industry and business data in a non-attributed manner for marketing and other purposes.

**7.6 Enforcement.** Client shall (i) ensure that all users of the SaaS Services comply with the terms and conditions of the Agreement, (ii) promptly notify Accruent of any actual or suspected violation thereof and (iii) cooperate with Accruent with respect to investigation and enforcement of the Agreement.

## 8. INDEMNIFICATION

**8.1 Accruent Indemnification.** Accruent will defend or settle, any action, suit or proceeding brought against Client that the SaaS Services used in accordance with this Agreement, infringe a third party's intellectual property right ("**Claim**"). Accruent will indemnify Client against all damages and costs finally awarded or those costs and damages agreed to in a monetary settlement of such action, which are attributable exclusively to such Claim, provided that Client: (i) promptly gives written notice of the claim to Accruent; (ii) gives Accruent sole control of the defense and settlement of the Claim (provided that Accruent may not settle any Claim against Client unless it unconditionally releases Client of all liability); and (iii) provides Accruent, at Accruent's expense, with all available information and assistance relating to the Claim and cooperates with Accruent and its counsel;.

Accruent has no obligation to the extent any Claim results from: (i) Third Party Software and/or Content, (ii) the combination, operation or use of the SaaS Services with software or data not provided by Accruent or (iii) Client's breach of this Agreement.

If it is adjudicated that an infringement of the SaaS Service by itself and used in accordance with the Agreement infringes any USA patent, registered copyright, or registered trademark, Accruent shall, at its option: (i) procure for Client the right to continue using the SaaS Service; (ii) replace or modify the same so it becomes non-infringing; or (iii) Client will be entitled to a refund of (i) the pre-paid portion of the SaaS Services fees paid to Accruent for the affected SaaS Service. THIS SECTION STATES ACCRUENT'S ENTIRE OBLIGATION TO CLIENT AND CLIENT'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT.

## 9. WARRANTIES.

**9.1 Warranties.** Accruent warrants that (i) the SaaS Services will perform materially in conformance with the applicable SaaS Services Documentation; (ii) the functionality and security of the SaaS Services will not materially decrease during a committed SaaS Services Term and (iii) the SaaS Services will not introduce Malicious Code into Client's systems.

**9.2 Remedies.** If the SaaS Services are not performed consistent with the warranty set out in Section 9.1(i) above, Client shall promptly notify Accruent in writing of its claim. As Client's exclusive remedy for any claim under this warranty and provided that such claim is determined by Accruent to be Accruent's responsibility, Accruent shall, within 30 days of its receipt of Client's written notice, (i) re-perform the affected SaaS Services so that they are conforming; (ii) provide Client with a plan reasonably acceptable to Client for re-performing the affected SaaS Services; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Accruent, then Accruent or Client may terminate the affected SaaS Service, and Client will be entitled to a refund of the pre-paid portion of the fees paid for the affected Service. The preceding warranty cure shall constitute Accruent's entire liability and Client's exclusive remedy for cure of the warranty set forth herein. If Client elects not to terminate the SaaS Service, Client waives all rights for the

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applicable warranty cure set forth herein. If the SaaS Services are not performed consistent with the warranty set out in Sections 9.1(ii) and 9.1(iii) above, Client shall be entitled to the remedies set out in Sections 11.2 (Termination) and 11.3 (Termination Refund or Payment Obligations).

**9.3 Exclusions.** Accruent is not responsible for any claimed breach of any warranty set forth in section 10.1 caused by: (i) modifications made to the SaaS Services by anyone other than Accruent; (ii) the combination, operation or use of the SaaS Services with any items not certified by Accruent; (iii) Accruent's adherence to Client's specifications or instructions; (iv) errors caused by or related to internet connections or (v) Client deviating from the SaaS Services operating procedures described in the Documentation.

**9.4 Third Party Software and Content.** Client acknowledges that certain modules of the SaaS Services may contain Third Party Software. Accruent may add and/or substitute functionally equivalent products for any third party items in the event of product unavailability, end-of-life, or changes to software requirements. The provision of Content is subject to availability from third party Content providers and Accruent shall have no liability should such Content become unavailable for any reason or is no longer available under reasonable commercial terms. Client's use of any Third Party Software shall be subject to, and Client and users shall comply with this Agreement and any applicable Third Party EULAs. Accruent makes no warranty with respect to any Third Party Software and Content. Client's sole remedy with respect to such Third Party Software shall be pursuant to the original licensor's warranty, if any, to Accruent, to the extent permitted by the original licensor. Content and Third Party Software are made available on an "AS IS, AS AVAILABLE" BASIS.

**9.5 Disclaimer.** EXCEPT AS SET FORTH ABOVE, ACCRUENT, ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTIES OF ANY KIND AND ACCRUENT, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SAAS SERVICES, ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED; (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, (iii) ANY WARRANTY THAT CONTENT AND/OR THIRD PARTY SOFTWARE WILL BE ACCURATE, RELIABLE AND ERROR-FREE AND (iv) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY ACCRUENT, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN.

**9.6** NOTHING CONTAINED HEREIN THIS SECTION 9. (WARRANTIES) SHALL AIM TO LIMIT ANY LIABILITY TO THE EXTENT PROHIBITED BY LAW.

## **10. LIMITATION OF LIABILITY.**

**10.1 Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THE AGREEMENT) TO THE OTHER FOR ANY CLAIM UNDER THIS AGREEMENT WILL BE LIMITED TO THE FEES PAID FOR THE PRIOR TWELVE (12) MONTHS FOR THE SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM. NOTWITHSTANDING THE FOREGOING, THE ABOVE LIMITATIONS SHALL NOT APPLY TO CLIENT'S OBLIGATIONS TO PAY ACCRUENT UNDER SECTION 4. FINANCIAL TERMS.

**10.2 Exclusion of Indirect and Consequential Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT A PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.3 Time to Bring Action.** EXCEPT FOR NON-PAYMENT OF ANY FEES DUE TO ACCRUENT, AND TO THE EXTENT PERMITTED BY APPLICABLE STATE LAW, NO CLAIM ARISING OUT OF THE AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN THE SHORTER OF ONE YEAR OR THE MINIMUM PERIOD ALLOWED BY LAW AFTER THE CAUSE OF ACTION HAS OCCURRED.

**10.4 Damages Prohibited by Law.** NOTHING CONTAINED HEREIN THIS SECTION 10 (LIMITATION OF LIABILITY) SHALL AIM TO LIMIT ANY LIABILITY TO THE EXTENT PROHIBITED BY LAW.

**10.5 Survival.** THIS SECTION SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.

## **11. TERM AND TERMINATION**

**11.1 Term.** The term of this Agreement shall commence on the Effective Date set forth above and shall continue in full force and effect until the expiration or termination of all Order Documents and SOW, unless otherwise terminated earlier as provided hereunder. SaaS Services and subscription based Training Services commence on the date specified in the Order Document and continue for the term set forth in the Order Document ("Initial Term"). Following the end of the Initial Term, SaaS Services shall automatically renew for the same length as the Initial Term (a "Renewal Term") unless Client gives written notice 60 days prior to the end of the Initial Term or any Renewal Term, of its intention to terminate the Service. The pricing for the first twelve months of any Renewal Term shall be provided by Accruent in writing no less than 90 days prior to the end of the Initial Term or any Renewal Term. The Initial Term and Renewal Terms are collectively referred to as the "Term". The term of access and use of HoL and/or one-time Training Services shall be as set out in the applicable Order Document.

**11.2 Termination.** Either party may terminate the Agreement including all Order Documents and SOW immediately upon written notice in the event of the following:

(i) in the event that the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach except for breach of Section 4 (Financial Terms) which shall have a ten (10) day cure period; or

(ii) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code.

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Where a party has a right to terminate the Agreement, the terminating party may, at its discretion, either terminate the Agreement or the applicable Order Document. Order Documents that are not terminated shall continue in full force and effect under the terms of this Agreement.

**11.3 Termination Refund or Payment Obligations.** In the event Client terminates this Agreement pursuant to Section 11.2, Accruent shall refund all pre-paid but unused SaaS Services fees to Client. Termination of this Agreement by Accruent pursuant to Section 11.2, shall not excuse Client's obligation to pay in full any and all amounts due, nor shall such termination result in a refund of fees paid.

**11.4 Copy of Client Data.** Upon termination of the SaaS Services, and provided Client is not in breach of any of its obligations under the Agreement, Accruent will, upon Client's written request and payment of the applicable fees, provide a backup copy of Client's Data (a then-current fee schedule will be provided upon request). Client agrees that Accruent shall have no obligation to maintain Client Data after thirty (30) days from termination and shall delete and/or destroy such Client Data thereafter.

## 12. GENERAL PROVISIONS

**12.1 Force Majeure.** Neither party shall have the right to terminate the Agreement or an Order Document or SOW and neither party shall incur any liability to the other party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, Order Document or SOW (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this section. Such events, occurrences, or causes shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions ("Force Majeure Events"). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**12.2 Assignment.** Neither party may assign the Agreement or any of its rights and obligations herein without the other party's prior written consent (such consent shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Documents and SOW's to its parent company or other affiliated company, to a successor by operation of law, or by reason of the sale or transfer of all or substantially all of its stock or assets to another entity. Should such parent company or other affiliated company, successor by operation of law, or by reason of the sale or transfer of all or substantially all of stock or assets be a competitor of the other party then such other party may terminate this Agreement upon written notice and Accruent shall refund all pre-paid but unused SaaS Services fees.

**12.3 Notice of U.S. Government Restricted Rights.** If the Client hereunder is the U.S. Government, or if the Software is acquired hereunder on behalf of the U.S. Government with U.S. Government federal funding, notice is hereby given that the Software is commercial computer software and documentation developed exclusively at private expense and are furnished as follows: "U.S. GOVERNMENT RESTRICTED RIGHTS. Software and the Protected Rights delivered subject to the FAR 52.227-19. All use, duplication and disclosure of the Software and/or the Protected Rights by or on behalf of the U.S. Government shall be subject to this Agreement and the restrictions contained in FAR 52.227-19, Commercial Computer Software License - (December 2007)".

**12.4 Export.** Client shall comply fully with all relevant export laws and regulations of the United States to ensure that (i) the Software and/or Protected Rights are not exported, directly or indirectly, in violation of United States law, export embargo, prohibition or restriction and (ii) no SaaS Services are accessed or used in violation of any United States law, export embargo, prohibition or restriction.

**12.5 Non-solicitation.** During the term of this Master Agreement and for a period of one year following its termination, neither party will solicit for employment directly or through other parties, without the other party's written permission, any individual employed by the other party, provided however that the solicitation or hiring of individuals responding to general public marketing and recruiting advertisements and events shall not be a violation of this provision; only active, targeted solicitation is prohibited.

**12.6 Compliance.** Client shall maintain and make available to Accruent upon written request records to show Client's compliance with the terms and requirements of the Agreement. Client acknowledges that the Software includes a license manager component to track usage of the Software and agrees not to impede, disable or otherwise undermine such license manager's operation.

**12.7 Notices.** Any notice required or permitted to be sent under the Agreement shall be delivered by hand, by overnight courier, or by registered mail, return receipt requested, to the address of the parties first set forth in the Agreement or to such other address of the parties designated in writing in accordance with this subsection.

**12.8 Relationship.** The Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

**12.9 Publicity.** Client hereby grants Accruent permission to make reasonable use of the name and logo of Client for Accruent's promotional activities, marketing materials and case studies.

**12.10 Invalidity.** If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**12.11 Survival.** The following provisions will survive any termination or expiration of the Agreement: sections 1, 4, 5, 6, 7.1, 7.2, 7.3, 7.5, 9, 10, 11, and 12.

**12.12 No Waiver.** Any waiver of the provisions of the Agreement or of a party's rights or remedies under the Agreement must be in writing to be effective. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. The waiver by either of the parties hereto of a breach or of a default under any of the provisions of the Agreement shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any party may otherwise have at law or in equity. Failure, neglect, or delay by a party to enforce the provisions of the Agreement or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such party's rights under the Agreement and shall not in any way affect the validity of the whole or any part of the Agreement or prejudice such party's right to take subsequent action.

**12.13 Intentionally Deleted.**

**12.14 No Third Party Beneficiaries.** This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Accruent under the Agreement shall apply equally to the owner of the Third

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Party Software with respect to the Third Party Software, and such third party is an intended third party beneficiary of the Agreement, with respect to the Third Party Software.

**12.15 Governing Law and Venue.** The Agreement shall be governed by and construed in accordance with the laws of the State of Virginia without giving effect to its principles of conflict of laws. Any dispute shall be litigated in the state or federal courts located in the State of Virginia to whose exclusive jurisdiction the parties hereby consent. For purposes of establishing jurisdiction in Virginia under this Agreement, each party hereby waives, to the fullest extent permitted by applicable law, any claim that: (i) it is not personally subject to the jurisdiction of such court; (ii) it is immune from any legal process with respect to it or its property; and (iii) any such suit, action or proceeding is brought in an inconvenient forum. The parties agree that this contract is not a contract for the sale of goods; therefore, the Agreement shall not be governed by any codification of Article 2 or 2A of the Uniform Commercial Code, or any codification of the Uniform Computer Information Technology Act ("UCITA"), or any references to the United National Convention on Contracts for the International Sale of Goods.

**12.16** Intentionally Deleted.

**12.17 Headings and Drafting.** The headings in the Agreement shall not be used to construe or interpret the Agreement. The Agreement shall not be construed in favor of or against a party based on the author of the document.

**12.18 Counterparts.** The Agreement may be executed in one or more counterparts, each of which shall constitute an enforceable original of the Agreement, and that facsimile and/or pdf scanned copies of signatures shall be as effective and binding as original signatures.

**13. Additional Terms**

**13.1 ETHICS IN PUBLIC CONTRACTING:** By entering into this contract, the Accruent certifies that they have acted into without collusion or fraud and that they have not offered or received any kickbacks or inducements from any supplier, manufacturer or subcontractor in connection with this contract and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**13.2 DEBARMENT STATUS:** Accruent certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this contract, nor are they an agent of any person or entity that is currently so debarred.

**13.3 AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

**13.4 AUDIT:** The Accruent hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

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## SERVICE LEVEL ATTACHMENT

This Attachment is an attachment to Agreement by and between **Accruent**, and **Client**. Capitalized terms used herein that are undefined shall have the meanings ascribed to such terms in the Agreement.

**1. Definitions**

**"Calendar Month"** shall mean the first to the last day of a calendar month.

**"Downtime"** shall mean: (a) planned weekly downtime which Accruent shall schedule to the extent reasonably practicable from 6:00pm PT Tuesday to 3:00am PT Wednesday; (b) planned monthly downtime (of which Accruent shall endeavor to give at least 5 days advance notice) one weekend per month between 6:00 pm PT Friday to 3:00 am PT Monday; (c) emergency downtime (which Accruent shall use reasonable efforts to provide advance notice); (d) any unavailability caused by circumstances beyond Accruent's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Accruent's possession or reasonable control, and denial of service attacks; (e) any errors that result from Clients improper use of the Service or (f) problems caused by Client's data, power supply, hardware, database, network, web servers, operation or other environmental factors of Client not within the direct control of Accruent.

**"Incident"** means an event which causes or may cause interruption to, or a reduction in the quality of, the Service, including without limitation any problem with or defect in the equipment, Software or data related to the Service.

**"Response Time"** shall mean the time it takes Accruent to communicate to the initial Client contact on a support request and assumes the support request was properly filed. Response time is not a resolution goal and should not be interpreted as a guarantee of service

**"Service Credit"** shall mean the average daily subscription fee calculated as follows: Annual Subscription fee/365.

**"Severity"** means the assessed possible risk or effect of an Incident on Client's business operations. All notifications, escalations and standards for responding to Incidents are set by Severity. Some of the elements used in determining the Severity of an Incident are the criticality of the applications being affected and the number of Users affected. Severity shall be classified by Accruent in accordance with Accruent's standard Severity Level classifications, as noted in section 3 below

**2. Service Levels – Service Availability.**

The Service is expected to be available twenty-four (24) hours per day, seven (7) days per week except for Downtime. Excluding Downtime Accruent is committed to maintaining 99.5% availability per calendar month for the Service during the Term.

In the event Accruent fails to meet an average of 98.5% availability during a particular Calendar Month (excluding Downtime), Accruent will, as Client's sole and exclusive remedy credit to Client's account one Service Credit for each percentage point below 98.5% availability (excluding Downtime) during such Calendar Month.

**3. Service Levels – Incident Response Times.**

Client is required to report Incidents via Accruent's ticketing system (via the Client Support Portal). Once a ticket is reported into Accruent's ticketing system, Accruent begins measuring the response time. For severity 1 or 2 Incidents, the Client must call the Accruent Help Desk so that the process of verifying the Incident can begin immediately. Target response times for Incidents by Severity level are provided below:

Severity Level	Description	Target Response Time
1	Critical issue that results in a complete system outage or major application failure which prevents Client from performing critical business process that has immediate financial impact or impact to data integrity. There is no workaround available.	1 business hour

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Severity Level	Description	Target Response Time
2	Serious issue that prevents the execution of a critical business process causing disruption of a major business function. It is causing serious impact on daily functions or processing and there is no acceptable workaround.	4 business hours
3	Issue that does not prevent the execution of a critical business process and does not impact data integrity. The problem may be reasonably circumvented using an available workaround.	2 business days
4	An inquiry and/or low system/business process impact issue. Examples include cosmetic defects on screens, errors in documentation, or an enhancement request.	3 business days

In the event Accruent fails to meet the Target Response Times for Severity 1 and Severity 2 Incidents as noted above during a particular Calendar Month, Accruent will as Client's sole and exclusive remedy credit to Client's account Service Credits as follows:

Number of Missed Severity 1 and 2 Target Response Times during a Calendar Month	Number of Service Credits
0-1	0
2-4	1
5-7	2
Over 8	3

#### 4. General.

Accruent will monitor the availability of the Service and the response times for the issues reported and any applicable Service Credits will be credited to Client on the following year's invoice or in the event that the Client does not renew for the following year, shall be provided as a refund of fees. Client acknowledges and agrees that the allocation of Service Credits shall not result in any refund of fees, except at the end of the Term or the applicable Renewal Term.

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