



# **Master Services Agreement**

**OCA Contract No. 212-20-0385**

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Between

**Texas Office of Court Administration**

*and*

**Contractor**

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Exhibit 2	Statement of Work
Exhibit 3	Service Level Agreement
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Exhibit 5	Historically Underutilized Business Subcontracting Plan
Exhibit 6	Guaranty [To be provided by OCA during negotiation.]

## MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”) is entered by and between the Texas Office of Court Administration (“**OCA**”), on behalf of the State of Texas, with its principal place of business at 205 W. 14th St., Suite 600, Austin, Texas 78701, and [ ] (“**Contractor**”), a [ ] corporation, with its principal place of business at [ ], effective as of the full execution of the Agreement by OCA and Contractor (the “**Effective Date**”).

WHEREAS, OCA has a mission to provide resources and information for the efficient administration of the judicial branch of Texas, specifically to provide Texas courts with technology solutions for electronic filing;

WHEREAS, in 2012, OCA implemented an electronic filing system for Texas courts (“**eFileTexas**”);

WHEREAS, under the Strategic Plan for Fiscal Years 2017 – 2021, submitted to the Governor’s Office of Budget and Policy and the Legislative Budget Board, OCA was tasked to develop, implement, and promote automated systems to facilitate improved court efficiencies and to advance the establishment of technology standards throughout the Texas courts;

WHEREAS, the current contract for eFileTexas expires in August of 2022;

WHEREAS, OCA desires a state-wide cloud-based, electronic filing system, with components to include eFiling preparation and submission, eFiling review and acceptance, fee administration and calculation, forms assembly, redaction component, document access capability, process automation and orchestration, account administration, integration, reporting, solution administration, and records management system (collectively, “**eFileTexas 2.0**” as further described in the Statement(s) of Work attached hereto);

WHEREAS, eFileTexas 2.0 is intended for use by Texas appellate, district, county, municipal, probate, and justice courts, their clerks and other designated court staff (“**Courts**”) and by an unlimited number of Authorized Users;

WHEREAS, OCA desires to outsource the management of certain OCA information technology services described in the Statement(s) of Work attached hereto;

WHEREAS, OCA desires to engage the Contractor to provide best-in-class services in technology and information, drive increased innovation and improved capabilities at an efficient cost, and leverage technology to make end users more productive, efficient and effective;

WHEREAS, in accordance with the Laws of the State, OCA issued the “Request for Offer” on the Texas Comptroller of Public Accounts’ Electronic State Business Daily website, Request for Offer No. 212-20-0385 “Request for Offer for a Statewide



Electronic Filing, Document Access, Redaction, and Forms Assembly System” (the “**RFO**”);

WHEREAS, after evaluation of the responses to the RFO (each a “**Response**”), OCA determined, and Contractor demonstrated that, Contractor is capable of providing and completing the Services in a successful, on-time manner, within budget, and in the manner documented in this Agreement, as further described within the Statement of Work; and

WHEREAS, OCA desires to procure from Contractor, and Contractor desires to provide to OCA, on the terms and conditions of this Agreement, the Services described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, OCA and Contractor (collectively, the “**Parties**” and each, a “**Party**”) hereby agree as follows:

## **1. INTRODUCTION**

### **1.1 Provision, Performance and Management by Contractor.**

OCA desires that certain Services presently provided, performed and managed by or for OCA shall be provided, performed and managed by Contractor as described in this Agreement. Contractor has carefully reviewed the terms of this Agreement and desires to provide, perform and manage such Services for OCA in accordance with the terms herein.

### **1.2 Contractor’s Experience and Qualifications.**

Contractor represents and warrants that it is an established provider of the Services as awarded under this Agreement and has the skills, qualifications, expertise, financial resources and experience necessary to provide the Services (including the plans, reports, and other deliverables) described in this Agreement in accordance with the terms herein.

### **1.3 Definitions.**

Capitalized terms used in this Agreement shall have the meanings set forth in **Exhibit 1**, unless otherwise defined in the context of the provision. Words having well-known technical or trade meanings, but not otherwise defined in this Agreement shall be accorded such meaning unless expressly defined otherwise herein.

### **1.4 Other Terms.**

(a) **Construction.** The terms defined in this Agreement shall, where appropriate in the context so written, be deemed to apply to the plural as

well as the singular of such terms. Unless otherwise expressly stated, the words “**herein**,” “**hereof**,” and “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Exhibit, Attachment or other subdivision. Article, Section, Subsection, Exhibit and Attachment references refer to the articles, sections and subsections of, and exhibits and attachments to, this Agreement. The words “**include**” and “**including**” shall not be construed as terms of limitation. Unless otherwise modified, the words “**day**,” “**month**,” and “**year**” mean, respectively, calendar day, calendar month and calendar year. The words “**notice**” and “**notification**” and their derivatives mean notice or notification in writing. All references to this Agreement shall include the Exhibits, Statement of Work, Accepted Change Requests, and any other Attachments to this Agreement unless otherwise provided.

- (b) **Requirement of Writing.** To the extent that Contractor is required under this Agreement to obtain OCA’s approval, consent, or agreement, such approval, consent, or agreement shall be in writing and must be signed by, or directly transmitted by electronic mail from, OCA Information Resources Manager, or its designee. Except as expressly set forth herein, OCA’s failure to respond to a requested approval, consent or agreement shall be construed as OCA’s rejection of same.

### **1.5 Compliance with Procurement Laws.**

This Agreement is the result of compliance with applicable procurement Laws of the State. OCA issued the RFO for the Services. Contractor provided the Response and after an evaluation and a determination by OCA that Contractor was invited into negotiations, OCA and Contractor engaged in extensive negotiations, discussions and due diligence that culminated in the formation of the contractual relationship described in this Agreement. OCA shall post a notice of award for an agreement arising from the RFO on the Electronic State Business Daily website.

## **2. ORDER OF PRECEDENCE**

Unless otherwise expressly stated in the Statement of Work, in the event of a conflict between or among the various documents comprising the Agreement, the following order of precedence shall control:

- (a) **Article 1** through **Article 20** of this Agreement;
- (b) **Exhibit 1**;
- (c) **Exhibit 2**;
- (d) **Exhibit 3**; and

- (e) **Exhibits 4** through **6**.

### 3. TERM

#### 3.1 Term.

- (a) **Initial Term.** The term of this Agreement shall commence as of 12:00:00 a.m., Central Standard Time, on the Effective Date and continue until 11:59:59 p.m., Central Standard Time, August 31, 2027, unless this Agreement is terminated earlier as provided herein, in which case the term of this Agreement shall end at 11:59:59 p.m., Central Standard Time, on the effective date of such termination (the “**Initial Term**”).
- (b) **Extension.** OCA may, in its sole and absolute discretion, unilaterally extend the then-applicable term of this Agreement for up to five (5) twelve-month extension periods (each twelve-month extension period, a “**Renewal Term**”) on the same terms and conditions of this Agreement (including changes to pricing for such terms set forth in this Agreement), by giving Contractor notice of such extension, and of the length thereof, at least ninety (90) days before the end of the Initial Term or any then-existing Renewal Term under this **Section 3.1(b)**. The Initial Term and any Renewal Term shall constitute the “**Term**”.

### 4. SERVICES

#### 4.1 Implementation Services.

- (a) **Implementation.** Commencing as of the Effective Date, Contractor shall perform the Implementation Services in accordance with the Statement of Work; the initial Accepted Statement of Work is attached hereto as **Exhibit 2** and may be amended, modified, or supplemented in writing by the Contractor Project Manager and the OCA Project Manager, and in accordance with **Section 20.7**. OCA shall not incur any charges, fees or expenses payable to Contractor or any third party engaged by Contractor in connection with the execution of the Implementation Services except as provided in this Agreement.
- (b) **Project Schedule.** Failure to obtain OCA’s Acceptance of Contractor’s Baseline Schedule as set forth in the Statement of Work within sixty (60) days following the Effective Date shall constitute a material breach of this Agreement. Upon OCA’s Acceptance, the Baseline Schedule as set forth in the Statement of Work shall automatically be incorporated into this Agreement and shall supersede and replace all prior Baseline Schedules. The Baseline Schedule may thereafter be amended as mutually agreed by the Parties in writing.

- (c) **Performance.** Contractor shall perform the Implementation Services in accordance with the Statement of Work. Contractor shall perform the Implementation Services in a manner that shall not materially (i) disrupt or have an adverse impact on the activities or operations of Authorized Users, (ii) degrade the services then being received by Authorized Users, or (iii) disrupt or interfere with the ability of Authorized Users to obtain the full benefit of the Implementation Services. OCA will provide the assistance and access as described in the Statement of Work.
- (d) **Notification by Contractor Project Manager.** Upon receiving any information indicating that Contractor may not be able to perform its responsibilities or obligations under the Statement of Work or any other Problem arises or is likely to arise in connection with the Implementation Services, Contractor shall immediately notify OCA in writing and, unless otherwise requested by OCA, prepare a Corrective Action Plan in accordance with **Section 5.3(b)**.
- (e) **Failure to Perform.**
  - (i) The Implementation Services and the activities and Deliverables associated therewith shall not be deemed to be complete until OCA's Acceptance thereof.
  - (ii) In the event that, in OCA's ~~sole~~reasonable discretion, Contractor has failed to perform any Implementation Services in accordance with the Statement of Work or timely deliver any Implementation Services in accordance with the Baseline Schedule (an "**Implementation Failure Event**"), then, in addition to any other remedies OCA may have ~~at law~~ or under this Agreement, if requested by OCA, the Contractor Project Manager shall promptly (but not more than one (1) Business Day from OCA's request) meet with the OCA Information Resources Manager, or its designee, to attempt to resolve the Implementation Failure Event. If the Contractor Project Manager and OCA Information Resources Manager, or its designee, are unable to resolve the Implementation Failure Event to the satisfaction of OCA within five (5) Business Days following such request by OCA, then the Parties shall resolve the Implementation Failure Event in compliance with **Article 18**.
- (f) **Suspension or Delay of Implementation Services.** Upon written notice to Contractor, OCA may, in its sole discretion, suspend or delay the performance of the Implementation Services. OCA shall reimburse Contractor for any costs incurred in connection with any such suspension or delay, provided that Contractor obtains OCA's approval prior to incurring such costs and uses commercially reasonable efforts to minimize such costs. OCA shall work in good faith with Contractor to minimize the period of any such suspension or delay.

## 4.2 Production Services.

- (a) **General.** Commencing on the Commencement Date, Contractor shall provide the Production Services to OCA, and, upon OCA's request, to Authorized Users, in accordance with this Agreement, the Statement of Work, and the Service Level Agreement attached hereto as **Exhibit 3**. The Statement of Work and the Service Level Agreement may be amended, modified, or supplemented in writing by the Contractor Program Manager and the OCA Information Resources Manager or other designee, and in accordance with **Section 20.7**.
- (b) **Included Services.** The following are deemed to be included in the Production Services: (i) services, functions, responsibilities and tasks that are reasonably required for the proper performance and provision of the expressly described Services; (ii) communication and coordination of efforts by and among Contractor Personnel as required to perform such Services and any related functions, responsibilities and tasks pursuant to the Statement of Work; and (iii) the related services, functions and responsibilities that were routinely performed during the six (6) months preceding the Effective Date by Contractor or former contractor who were displaced or whose functions were displaced as a result of this Agreement and which are expressly detailed in the Statement of Work.
- (c) **Required Resources.** Contractor shall possess requisite technical knowledge, expertise, and other resources necessary to provide the Production Services.
- (d) **Notification by Contractor Program Manager.** Upon receiving any information indicating that Contractor may not be able to perform its responsibilities or obligations under the Production Services, or any other Problem arises or is likely to arise in connection with the Production Services, Contractor Program Manager shall immediately notify OCA in writing and, unless otherwise requested by OCA, prepare a Corrective Action Plan in accordance with **Section 5.3(b)**.

## 4.3 Termination Assistance Services. [See Note 6 in Table 33]

- (a) **General.** Upon OCA's request following an Assistance Event, Contractor shall provide Termination Assistance Services directly to OCA, its successors or assigns and any of their designee(s).
- (i) **Period of Provision.** Contractor shall provide Termination Assistance Services commencing on the date that OCA determines there shall be an Assistance Event and continuing for up to twelve (12) months after the effective date of such Assistance Event, as designated by OCA, subject to further extensions as permitted by **Section 4.3(a)(iii)**. For avoidance of doubt, Termination Assistance

Services performed by Contractor (A) during the Term of this Agreement shall be performed without any additional Charges, except as set forth in **Section 4.3(d)**; (B) after the Term of this Agreement shall be performed with Charges as set forth in **Exhibit 4**.

- (ii) **Notice of an Assistance Event.** OCA shall provide Contractor with written notice of an Assistance Event. Such notice shall include a description of the Services that are to be terminated or discontinued, and the anticipated effective date of the Assistance Event. OCA may modify or update any of the information provided in the initial notice of an Assistance Event from time to time by a supplemental notice from OCA to Contractor.
  - (iii) **Extension of Services.** OCA may, at any time upon ten (10) Business Days' written notice to Contractor, elect to (i) suspend the period of performance of any Termination Assistance Services (in whole or in part) and, upon fifteen (15) Business Days' written notice to Contractor, restart the period for performance of any Termination Assistance Services, or (ii) extend the period for performance of the Termination Assistance Services (in whole or in part); provided that the total of all such delays or extensions shall not cause Contractor to provide the Termination Assistance Services for more than twenty-four (24) months.
  - (iv) **Firm Commitment.** Contractor shall provide Termination Assistance Services regardless of the reason for the Assistance Event.
  - (v) **Performance.** Contractor shall perform Termination Assistance Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as the accepted industry standards of first tier providers of services that are the same as or similar to the Services. The quality and level of performance of Termination Assistance Services provided by Contractor shall continue to meet or exceed the Service Levels and shall not be degraded or deficient in any respect. Service Level Reimbursements shall be assessed for any failure to meet Service Levels during any period in which Termination Assistance Services are provided. If any period for performing any Termination Assistance Services extends beyond the expiration or the effective date of any termination of this Agreement, the provisions of this Agreement shall remain in full effect for the duration of such period.
- (b) **Scope.** As part of the Termination Assistance Services, Contractor shall timely transfer the control and responsibility for Services previously performed by or for Contractor to OCA and/or its designee(s), and upon

OCA's request, shall provide any and all information and reasonable assistance requested by OCA including (i) the Services required to continue without interruption or adverse effect, or (ii) the orderly transfer of the Services (or replacement or supplemental services) to OCA and/or its designee(s).

- (c) **General Support.** As part of the Termination Assistance Services, Contractor shall (i) within thirty (30) days from receipt of notice of an Assistance Event, develop and provide OCA and/or its designee(s) with a written plan for the migration of the Services to OCA and/or its designee(s), which plan shall include capacity planning, process planning, facilities planning, human resources planning, technology planning, telecommunications planning and other planning necessary to effect the transition ("**Termination Assistance Plan**"), (ii) upon OCA's Acceptance of the applicable Termination Assistance Plan, perform all Services necessary to implement the Termination Assistance Plan, (iii) analyze and report on the space required for e-Filing Data and the Software needed to provide the Services, (iv) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition to OCA and/or its designee(s), (v) create and provide copies of e-Filing Data in the format and on the media reasonably requested by OCA and/or its designee(s), and (vi) provide other technical and process assistance, documentation and information as requested by OCA and/or its designee(s).
- (d) **Rates and Charges.** Except as provided in this **Section 4.3(d)**, Contractor shall provide all Termination Assistance Services at no additional charge. To the extent OCA requests that Contractor perform only a portion (but not all) of the Services included in a particular Charge, the amount to be paid by OCA shall be equitably adjusted downward in proportion to the portion of the Services that Contractor shall not be providing. [Contractor reserves its rights to dispute the amount of proposed reduction.](#)
- (e) **Resources.** Contractor shall maintain capability at all times during the Term to, on at least thirty (30) days' notice, deploy all necessary resources to perform any Termination Assistance Services.
- (f) **Information.** Upon receipt of written request by OCA following the occurrence of any breach by Contractor under this Agreement or in the event that OCA elects to evaluate re-procurement of all or any portions of Services, Contractor shall promptly (but not less than ten (10) Business Days following receipt of such request) deliver to OCA reports, data and information that OCA deems necessary, including all reports, data and information specified in **Section 5.3**. For the avoidance of doubt, Contractor shall deliver all such reports, data and information regardless

of whether OCA has provided notice of or otherwise declared an Assistance Event.

#### 4.4 Change Request.

If OCA requests that Contractor perform any New Services within the scope of the RFO that are reasonably related to the Services or other services generally provided by Contractor, Contractor shall promptly prepare a Change Request for OCA's consideration in accordance with the change process outlined in the Integrated Change Management Plan developed pursuant to the Statement of Work.

#### 4.5 Acceptance.

- (a) **Deliverables.** OCA shall determine, in its reasonable judgment, pursuant to the provisions of the Statement of Work, when a Deliverable shall be Accepted. Unless otherwise requested by OCA, each Deliverable shall be provided by Contractor and subject to OCA's "Acceptance" pursuant to the Statement of Work, or if not stated in the Statement of Work, as described below:
- (i) **Acceptance Review Period.** For determining whether to Accept or reject each Deliverable, OCA shall have either (A) the period of time set forth in the Statement of Work, or (B) if no such period is set forth, ten (10) Business Days following OCA's acknowledgement of receipt of Contractor's notification that Contractor has completed such Deliverable (any such period of time, the "**Acceptance Review Period**"). Contractor shall perform comprehensive testing (e.g., unit, string, integration, stress/performance, volume, system testing, regression, security/intrusion, user acceptance), if applicable, on each such Deliverable prior to submitting such item to OCA for Acceptance.
  - (ii) **Acceptance Review.** During the Acceptance Review Period, OCA shall review and may further test each Deliverable, individually and/or collectively, to determine whether any such item contains any type of Noncompliance. Contractor shall cooperate with such review and testing efforts, provide access to a technical environment to facilitate such review, and provide all applicable documentation that may assist in such review and testing, including the results of any testing performed by Contractor pursuant to **Section 4.5(a)(i)**.
  - (iii) **Acceptance.** Upon OCA's Acceptance of a Deliverable, OCA shall inform Contractor in writing of such Acceptance. If OCA does not Accept a Deliverable, OCA shall provide Contractor a notice of Noncompliance as described below. If OCA does not Accept or



deliver a notice of Noncompliance to Contractor by the end of the Acceptance Review Period, Contractor shall provide OCA with written notice that the Acceptance Review Period has expired, and may deliver a written request for a meeting to take place within two (2) days with OCA Information Resource Manager, or its designee, to discuss, review, and consider Acceptance of such Deliverable.

- (iv) **Noncompliance.** If OCA detects any Noncompliance during the Acceptance Review Period, OCA shall promptly notify Contractor in writing and reasonably specify the nature of the failure or deficiency giving rise to such Noncompliance. Promptly after receiving such notice from OCA (but not more than two (2) days from Contractor's receipt of such notice), and at no charge to OCA, Contractor shall correct or commence correction any such Noncompliance. Following correction of any such Noncompliance, Contractor shall resubmit the Deliverable to OCA for Acceptance and the applicable Acceptance Review Period shall begin again in accordance with **Section 4.5(a)(i)** through **(iii)**.
- (v) **Failure to Cure a Noncompliance.** If Contractor does not correct all Noncompliance of a Deliverable or provide and interim workaround within a reasonable period of time following resubmission and receipt of a second notice of such Noncompliance (not to exceed five (5) Business Days), then OCA may, in its sole discretion and upon written notification to Contractor, (A) provide Contractor an additional cure period to fix the Noncompliance; (B) conditionally Accept the Deliverable and, at no cost to OCA, require Contractor to develop a remediation plan, subject to OCA's approval of such plan, whereby Contractor shall design and implement a workaround solution that mitigates the Noncompliance; (C) reject the Deliverable entirely, in which case Contractor shall fully refund any Charges paid for such Deliverable; or (D) ~~correct the Noncompliance itself or hire a third party to correct the Noncompliance at Contractor's reasonable expense (all such out-of-pocket expenses and costs incurred by OCA shall be subject to set-off as set forth in Section 11.2);~~ (E) implement and use the Deliverable despite the Noncompliance and equitably reduce the Charges in an amount reasonably determined by OCA; ~~or (F) require Contractor to pay the Deliverable Fees.~~ If OCA elects options (A) or (B) above and Contractor fails to cure the Noncompliance in accordance with the foregoing, OCA may thereafter also elect to pursue options (C); or (D); ~~(E) or (F)~~. The remedies above are in addition to and shall not limit OCA's other remedies, ~~whether at Law, in equity, or~~ under this Agreement. Contractor reserves its rights to dispute the amount of proposed reduction or other actions.

- (vi) **Previously Accepted Items.** In the event any modification or rework of a previously Accepted Deliverable or other Deliverable is required for the Acceptance of a subsequent deliverable, then Contractor shall perform such modification or rework at no Charge to OCA. Furthermore, in the event of a discovery of a latent defect in a previously Accepted Deliverable, where such latent defect would have qualified as Noncompliance at the time of Acceptance, upon notification by Contractor shall, at no additional Charge, repair or replace or otherwise correct the Noncompliance to the level of performance specified in the Agreement.

#### 4.6 Knowledge Transfer.

- (a) **Implementation Service Period.** During the period following the Effective Date and prior to the Commencement Date, Contractor shall use ~~its~~ best commercially reasonable efforts to acquire the practical skill, knowledge and expertise from any current contractor who is providing the Services prior to the Effective Date in relation to the delivery of the Services, including the knowledge necessary for the Contractor to perform the Services. Contractor shall accomplish such knowledge transfer, as appropriate, by interviewing the contractor currently performing the Services, interviewing the Electronic Service Providers, interviewing the court case management system providers, as well as reviewing information, records and documents related to the provision of the Services. The information to be reviewed to affect the obligations of such knowledge transfer includes (i) copies of procedures and operations manuals, (ii) relevant system, software and/or hardware information, (iii) information regarding work in progress and associated unresolved faults in progress, and (iv) any other information relevant to such knowledge transfer. Contractor shall immediately (within one (1) Business Day) notify OCA of any lack of cooperation or assistance on the part of any third party that impedes or hinders Contractor's efforts to comply with this obligation.
- (b) **Termination Service Period.** During the period when Contractor provides the Termination Assistance Services or at any time during the Term, Contractor shall use ~~its~~ best commercially reasonable efforts to communicate and transfer the practical skill, knowledge and expertise to OCA and any new contractor who will be providing the Services after the Term in relation to the delivery of the Services, including the knowledge necessary for OCA or the new contractor to perform the Services. Contractor shall accomplish such knowledge transfer, as appropriate, by providing interviews to OCA or the new contractor as well as providing information, records and documents related to the provision of the Services. The information to be provided to affect the obligations of such knowledge transfer includes (i) copies of procedures and operations manuals, (ii) relevant system, software and/or hardware information, (iii) information regarding work in progress and associated unresolved faults

in progress, (iv) information requirements necessary to support a future procurement of Services, and (v) any other information relevant to such knowledge transfer. Contractor shall immediately (within one (1) Business Day) notify OCA of any lack of cooperation on the part of any third party that impedes or hinders Contractor's efforts to comply with this obligation.

## 5. PERFORMANCE STANDARDS

### 5.1 Performance and Service Levels.

Contractor will perform the Services under the Statement of Work in accordance with the applicable Service Level Requirements along with calculation methodologies and other detailed terms as detailed in the Statement of Work, the Deliverable Expectation Document, or the Service Level Agreement, as the case may be. Contractor shall provide OCA with detailed Reports on Contractor's compliance with the Statement of Work and the Service Levels upon the frequency set forth in the Statement of Work or the Service Level Agreement, as the case may be, or if not specified in the Statement of Work or the Service Level Agreement, then monthly. In addition, any changes to the Statement of Work or the Service Levels are subject to OCA's prior written approval. In the absence of any modifications, the performance targets, Service Level Requirements, and measurement intervals in the Service Level Agreement shall apply to all Contract Years. Nothing in this **Section 5.1** shall be deemed to supersede the Service Levels set forth in the Service Level Agreement.

### 5.2 Reimbursements. [\[Subject to details about OCA Expectations.\]](#)

- (a) **Deliverable Fees.** Contractor recognizes that OCA is paying Contractor to provide certain Deliverables by the time and in the manner set forth in the Statement of Work. If Contractor fails to meet its obligations with respect to such Deliverables, then, in addition to other remedies available to OCA, Contractor shall pay to OCA the applicable Deliverable Fees set forth in the Statement of Work. Deliverable Fees are distinct from Service Level Reimbursements. Under no circumstances shall the imposition of Deliverable Fees be construed as OCA's sole or exclusive remedy for any failure to meet Contractor's agreed obligations.
- (b) **Service Level Reimbursements.** Contractor recognizes that OCA is paying Contractor to deliver the Services at specified Service Levels in the manner set forth in the Service Level Agreement. If Contractor fails to meet such Service Levels or if Contractor fails to deliver the performance monitoring Report within the timeframe set forth in the Service Level Agreement, then, in addition to other remedies available to OCA, Contractor shall pay to OCA the relevant Service Level Reimbursements in recognition of the diminished value of the Services resulting from Contractor's failure to meet the agreed upon level of performance, and not as a penalty. Under no circumstances shall the imposition of Service

Level Reimbursements be construed as OCA's sole or exclusive remedy for any failure to meet the Service Levels.

### 5.3 Service Problem Analysis.

- (a) **Notification of Problems.** If Contractor becomes aware of any Problem, then Contractor will immediately inform OCA in writing of such situation and promptly (but not more than two (2) days from the time in which Contractor first becomes aware of any such situation) provide OCA with a reasonably detailed description of such acts, omissions, failures or other events and the impact or expected impact and Contractor Program Manager and OCA will meet to formulate and implement an action plan to minimize or eliminate the impact of such situation.
- (b) **Corrective Action Plan.** In the event that either (i) OCA reasonably determines that a Problem has occurred or a Problem reasonably likely could occur or (ii) Contractor has determined that a Problem has occurred or a Problem reasonably likely could occur, then OCA or Contractor, as applicable, shall promptly (but not more than two (2) days from the time in which such Party first becomes aware of any such situation) notify the other Party of such failure or anticipated failure (a "**CAP Notice**"). Concurrently with delivery or receipt of such CAP Notice, as applicable, Contractor shall (A)(1) immediately take steps to mitigate any harmful effects of such failure within its control, (2) upon OCA's approval, correct the problem as soon as practicable, (3) continuously, and when requested by OCA, advise OCA of the progress and status of remedial efforts being undertaken with respect to such problem, and (4) demonstrate to OCA that all reasonable action has been taken to prevent a recurrence of the immediate failure; (B) promptly upon resolution of the Problem (and in any event, within five (5) days after resolution of the Problem) perform a Root Cause Analysis, (C) report to OCA on the nature and scope of the problems identified, and (D) prepare a Corrective Action Plan to correct the source of the problems and take all actions necessary to prevent its recurrence, including providing all additional resources necessary to resolve such failure. Following delivery of a Corrective Action Plan and Acceptance of such Corrective Action Plan by OCA, Contractor shall, within the timeline set forth in the Corrective Action Plan, (x) promptly correct the source of the problems in accordance with the Corrective Action Plan, (y) advise OCA of the progress of correction efforts at stages determined by OCA, and (z) demonstrate to OCA that all reasonable action has been taken to prevent a recurrence of the failure.
- (c) **Additional Remedies.** In the event that Contractor fails to identify and resolve any problems within its control that may impede or delay the timely delivery of the activities of the Statement of Work without prejudice to OCA's other rights and remedies under this Agreement ~~or at law or equity~~, Contractor shall immediately provide, at its sole cost and expense,

all such additional resources as are necessary to identify and resolve any such problems that may impede or delay the delivery of the Implementation Services or the Services, as the case may be. In addition, without prejudice to OCA's other rights and remedies under the Agreement ~~or at law or equity~~, OCA may equitably reduce the Charges in an amount reasonably estimated by OCA to account for the delayed or incomplete tasks in the Statement of Work or the Services that OCA is not receiving or did not receive. Contractor reserves its rights to dispute the amount of proposed reduction.

**5.4 Satisfaction Surveys. [Entire section needs discuss.]**

- (a) **OCA Conducted Surveys.** Unless otherwise set forth in the Statement of Work, OCA may, through an independent third party selected by OCA, conduct customer satisfaction index surveys of the Services to be provided under this Agreement in accordance with the schedule, scope, survey protocols and procedures specified in the Statement of Work; provided that in no event shall such satisfaction survey be conducted prior to the third anniversary of the Effective Date, and thereafter, once every other Renewal Term. Contractor shall be responsible for the expenses of all such customer satisfaction index surveys conducted pursuant to this **Section 5.4(a)**. In addition to the satisfaction surveys to be conducted pursuant to **Section 5.4(a)**, OCA may survey satisfaction with Contractor's performance in connection with and as part of broader satisfaction surveys periodically conducted by OCA.
- (b) **Contractor Responsibilities.** In addition to the customer satisfaction index surveys conducted by independent third parties selected by OCA pursuant to **Section 5.4(a)**, Contractor shall conduct its own surveys and as described in the Statement of Work. Throughout the Term of this Agreement, upon request by OCA, Contractor will conduct surveys and provide any other data reasonably related thereto. At OCA's request, Contractor shall cooperate and assist OCA with the formulation of the survey questions, protocols and procedures and the execution and review of any surveys conducted pursuant to this **Section 5.4**.
- (c) **Survey Follow-up.** Following review of any surveys conducted pursuant to this **Section 5.4**, Contractor shall promptly review the survey results with OCA to identify trends and assess overall customer satisfaction. If the results of any satisfaction survey conducted pursuant to **Section 5.4(a)** or **(b)** indicate that the level of satisfaction with Contractor's performance is less than the applicable Service Level(s) specified in the Service Level Agreement, Contractor shall promptly (i) conduct a Root Cause Analysis and identify the cause of such dissatisfaction; (ii) develop a Corrective Action Plan to address and improve the level of satisfaction; (iii) present such plan to OCA for its review, comment and approval, which approval may be withheld in OCA's sole discretion; and (iv) demonstrate to OCA

that Contractor has taken action in accordance with the approved plan and as necessary to improve the level of satisfaction. Contractor shall revise and resubmit the Corrective Action Plan until approved by OCA. OCA and Contractor shall establish a schedule for completion of a Root Cause Analysis and the preparation and approval of the Corrective Action Plan which shall be reasonable and consistent with the severity and materiality of the problem; provided that the time for completion of such tasks shall not exceed fifteen (15) Business Days from the date such survey results are finalized and reported. Contractor's Corrective Action Plan developed hereunder shall specify the specific measures to be taken by Contractor and the dates by which each such action shall be completed. Upon OCA's request following the completion of the measures described in such Corrective Action Plan, Contractor shall conduct follow-up surveys with the affected OCA users and management to confirm that the cause of any dissatisfaction has been addressed and that the level of satisfaction has improved.

## **6. CONTRACTOR PERSONNEL**

### **6.1 Contractor Project Manager.**

Contractor shall designate a Contractor Project Manager. The Contractor Project Manager shall (i) be a full-time employee of Contractor, (ii) devote his or her full time and effort to managing the Implementation Services, (iii) remain in this position until Contractor completes the Implementation Services in accordance with the Statement of Work (except as the result of voluntary resignation or involuntary termination for cause, illness, disability, or death, or other leave of absence protected by applicable Law (e.g., the Family and Medical Leave Act)), (iv) serve as the single point of accountability for the Implementation Services, (v) be the single point of contact to whom all OCA communications concerning the Implementation Services and the Statement of Work may be addressed, (vi) have authority to act on behalf of Contractor in all day-to-day matters pertaining to the Implementation Services and the Statement of Work, and (vii) have day-to-day responsibility for ensuring timely delivery of all Deliverables and performance of the Implementation Services in accordance with the Statement of Work.

### **6.2 Contractor Program Manager.**

Contractor shall designate a Contractor Program Manager. The Contractor Program Manager shall (a) be a full-time employee of Contractor, (b) devote sufficient effort to manage the Services, (c) remain in this position for a minimum period of one (1) year from the Commencement Date (except as a result of voluntary resignation or involuntary termination for cause, death or disability, or other leave of absence protected by applicable Law (e.g., the Family and Medical Leave Act)), (d) serve as the single point of accountability for the Services, (e) be the single point of contact to whom all communications from

OCA concerning this Agreement or the Services may be addressed, (f) have authority to act on behalf of Contractor in all day-to-day matters pertaining to this Agreement, (g) have day-to-day responsibility for service delivery, billing and relationship management, and (h) have day-to-day responsibility for ensuring customer satisfaction and attainment of all Service Levels.

### **6.3 Contractor Personnel Are Not State or OCA Employees.**

The Parties intend to create an independent contractor relationship and nothing in this Agreement shall operate and be construed as making the State and OCA, on the one hand, and Contractor, on the other hand, partners, joint venturers, principals, joint employers, agents or employees of or with the other. No officer, director, employee, agent, Affiliate of, or contractor or subcontractor retained by, Contractor to perform Services hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor or subcontractor of the State or OCA for any purpose. Contractor, and not the State or OCA, has the right, power, authority and duty to supervise and direct the activities of the Contractor Personnel and to compensate such Contractor Personnel for any Services performed by them hereunder. Except as expressly provided in this Agreement, neither Contractor nor any of Contractor's employees, agents or Subcontractors may act in any sense as agents or representatives of OCA or the State. Contractor, and not the State or OCA, shall be fully responsible and therefore solely liable for all acts and omissions of Contractor Personnel in any way associated with or related to this Agreement, the Services, OCA Sites, Contractor Sites, OCA Confidential Information, or Equipment, including any and all acts and omissions constituting negligence, gross negligence, willful misconduct and/or fraud.

### **6.4 Responsibility for Contractor Personnel.**

- (a) Contractor Personnel and Subcontractors shall be paid exclusively by Contractor for all Services performed. Contractor is responsible for and must comply with all requirements and obligations related to such employees, agents or Subcontractors under local, State or federal law, including minimum wage, social security, unemployment insurance, State and federal Income Tax and workers' compensation obligations.
- (b) Contractor assumes sole and full responsibility for its acts and the acts of the Contractor Personnel and Subcontractors relating to the performance of this Agreement. Contractor expressly agrees that OCA does not and shall not assume any liability for the actions of, or judgments rendered against the Contractor or any Contractor Personnel. OCA's liability to the Contractor Personnel, if any, shall be governed by Chapter 101, Texas Civil Practice & Remedies Code.
- (c) Contractor agrees that any claim on behalf of any person arising out of employment, alleged employment, agency or subcontracts (including

claims of discrimination against Contractor, its officers, or its agents or its Subcontractors) is the sole responsibility of Contractor and is not the responsibility of OCA. Contractor agrees that any person who alleges a claim arising out of employment, alleged employment, agency, or subcontract by Contractor (including claims of discrimination against Contractor, its officers, its agents or its Subcontractors) will not be entitled to any compensation, rights, or benefits from OCA (including tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

- (d) Contractor shall demonstrate on-site compliance with the Federal Tax

Reform Act of 1986, Section 1706, amending Section 530 of the Revenue

Act of 1978, dealing with issuance of Form W-2s to common-law

employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard workers' compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements.

## **6.5 Qualifications of Contractor Personnel.**

### **(a) Contractor Personnel Verification.**

- (i) Contractor shall be responsible for verifying that all Contractor Personnel (A) are authorized to work in any location in which they are assigned to perform Services, (B) meet the criteria for Contractor Personnel under this Agreement, and (C) have not been convicted of or accepted responsibility for a felony or a misdemeanor involving a dishonest or violent act, do not use illegal drugs and are not otherwise disqualified from performing their assigned Services under applicable Laws. Contractor shall maintain, in a reasonably accessible location and format, the documentation reasonably necessary to verify the foregoing, as well as a resume and such other information about the individual as may be reasonably requested by OCA, and shall make such documentation available to OCA or OCA Auditors upon request.



- (ii) Contractor agrees to utilize and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: (A) all persons employed to perform duties within Texas during the Term of the Agreement; and (B) all persons, including Subcontractors, assigned by Contractor to perform work pursuant to the Agreement within the United States of America. Contractor shall require its Subcontractors to comply with the requirements of this Section. Nothing herein is intended to exclude compliance by Contractor and its Subcontractors with all other applicable federal immigration statutes and regulations promulgated pursuant thereto.
- (b) **Background and/or Criminal History Investigations.** Prior to the date any Contractor Personnel are assigned to OCA's account, Contractor shall conduct, at its expense and in compliance with applicable Law, a background check, criminal history investigation, and substance abuse screening of each such member of the Contractor Personnel. Contractor Personnel background checks, criminal history investigations, and substance abuse screenings will include investigation of such matters as reasonably required by OCA, subject to the limitations of applicable Law. Contractor shall maintain, in a reasonably accessible format and location, documentation evidencing that background checks, criminal history investigations and substance abuse screenings have been completed on all Contractor Personnel, and will grant OCA access to such documentation upon request. Contractor will exercise reasonable care and diligence to ensure that Contractor does not assign individuals to the Contractor Personnel who are not legally authorized to work in the U.S. or who, based on the results of any background checks, criminal history investigations or substance abuse screenings, may present a threat to the safety or security of any person or any e-Filing Data, facilities, operations, or assets.

## **6.6 Removal of Contactor Personnel.**

Contractor shall immediately remove (or cause to be removed) any Contractor Personnel known to be or reasonably suspected of engaging in activities that may present a threat to the safety or security of any person or any e-Filing Data, facilities, operations, or assets or upon OCA's request to remove such Contractor Personnel. In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation.

## **6.7 Union Agreements.**

Contractor shall provide OCA not less than ninety (90) days' notice of the expiration of any collective bargaining agreement with unionized Contractor Personnel if the expiration of such agreement or any resulting labor dispute could potentially interfere with or disrupt or impact the activities or operations of

OCA or Contractor's ability to timely perform the Services in accordance with this Agreement.

## 7. CONTRACTOR RESPONSIBILITIES

### 7.1 Reports, Data Correction, Re-Performance.

- (a) **Reports.** In addition to any other reports required by this Agreement, Contractor shall provide OCA with (i) those reports described in the Statement of Work, (ii) those reports described in the Service Level Agreement, and (iii) such additional reports as OCA may reasonably identify from time to time to be generated and delivered by Contractor on an ad hoc or periodic basis (all such reports, the "**Reports**"). If additional Reports require substantial effort, Contractor reserves the right to request a Change.
- (b) **Back-Up Documentation.** As part of the Services, Contractor shall retain, and provide OCA with, such documentation and other information available to Contractor (including original source documentation and data in its native format or in an alternative industry-standard format as requested by OCA) as may be requested by OCA from time to time in order to verify the accuracy of the Reports provided by Contractor. In addition, Contractor shall retain, and provide OCA with, all documentation and other information reasonably requested by OCA from time to time to verify that Contractor's performance of the Services complies with the Service Levels and this Agreement.
- (c) **Correction of Errors.** Contractor shall promptly, but not more than two (2) days from the time in which Contractor first becomes aware of any errors or inaccuracies with respect to the Reports, correct or commence correction of any such errors or inaccuracies as part of the Services and at no additional cost to OCA.
- (d) **System Documentation.** Upon at least fifteen (15) Business Days' notice from OCA (but no more than twice in a Contract Year), Contractor will meet with representatives of OCA and any of its designee to (i) explain how the Services are provided, and (ii) provide such training and documentation as OCA may require for OCA to (A) provide services that interact with or interface with the Services, and (B) understand and operate the Software. Upon OCA's request from time to time, Contractor will deliver to OCA a full description of the processes, tools and environmental configuration related to the Services.

### 7.2 Meetings.

During the Term and in addition to any meetings provided for in the Statement of Work, representatives of the Parties shall, in addition to attending quarterly

meetings of the Judicial Committee on Information Technology, meet periodically as requested by OCA to discuss matters arising under this Agreement. Such meetings may include meetings with OCA, Contractor and former contractors. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings. All meetings may be held by teleconference or other electronic means.

**7.3 Internal Controls. [To be reviewed and discussed. Many of these are beyond the scope of the requested Services]**

(a) **General.** Contractor shall develop and implement Quality Assurance and to the extent applicable any customized Service-specific internal control (e.g., financial and accounting controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) processes and procedures, including implementing tools and methodologies, to perform the Services in an accurate and timely manner (and confirm that they are so performed and accounted for) in accordance with (i) the Service Levels and other requirements of this Agreement, (ii) generally accepted accounting principles (applied in accordance with generally accepted auditing standards), (iii) accepted industry standards of first tier providers of services that are the same as or similar to the Services, (iv) the Laws applicable to OCA (without limiting the obligations of the Parties under **Section 14.10**), and (v) the industry standards, described in **Section 7.3(b)**, applicable to OCA and the performance of the Services. Such processes, procedures and controls shall include verification, checkpoint reviews, testing, acceptance and other procedures for OCA to assure the quality and timeliness of Contractor's performance. Without limiting the generality of the foregoing, Contractor shall:

- (i) Maintain a strong control environment in day-to-day operations to assure that the following fundamental control objectives are met: (A) financial, billing and operational information is valid, timely, complete and accurate; (B) operations are performed efficiently and achieve effective results, consistent with the requirements of this Agreement; (C) assets and data are safeguarded in accordance with Contractor's internal (and in all events reasonable) practices (but without expanding Contractor's obligations under **Section 12.2(b)**); and (D) actions and decisions of Contractor are in compliance with Laws (without limiting the obligation of the Parties under **Section 14.10**) and the terms of this Agreement;
- (ii) Build the following basic control activities into work processes: (A) accountability clearly defined and understood; (B) access properly controlled; (C) adequate supervision; (D) transactions properly authorized; (E) transactions properly recorded; (F) transactions recorded in proper accounting period; (G) policies, procedures and

responsibilities documented; (H) adequate training and education of Contractor Personnel; and (I) adequate separation of duties among the Parties;

- (iii) Develop and execute a process to perform (and confirm performance of) periodic control self-assessments with respect to all Services (such self-assessments to be performed at least annually unless and until OCA approves less frequent self-assessments) and provide the results of such self-assessments to OCA upon request;
- (iv) Maintain an internal audit function set forth in the change management plan developed as part of the Statement of Work to sufficiently monitor the processes, internal controls and Systems used to provide the Services in accordance with the Service Level Requirements (i.e. perform audits, track control measures, communicate status to management, drive corrective action, etc.);
- (v) Provide copies and complete and accurate summaries of any internal audit reports related to the Services to OCA;
- (vi) Conduct investigations of suspected fraudulent activities within Contractor's organization. Contractor shall promptly (but not more than two (2) days from the time in which Contractor first becomes aware of any such situation) notify OCA of any such suspected fraudulent activity and provide OCA with a reasonable summary of the results of any such investigation as they relate to OCA and such supplemental materials as OCA may reasonably request. At Contractor's request, OCA shall provide reasonable assistance to Contractor in connection with any such investigation;
- (vii) Maintain disaster avoidance procedures designed to safeguard e-Filing Data and OCA's other Confidential Information. The force majeure provision shall not limit Contractor's obligation under this subsection;
- (viii) Utilize a high-availability fail-over system at a data center facility in the United States that is geographically remote from the primary system on which the Services are hosted (the "**Secondary Backup Facility**"). Except for its location and housing facility, the fail-over system shall (A) be, from the Authorized User's perspective, identical in all respects to the primary system, (B) have hardware and software, network connectivity, power supplies, backup generators, and other similar equipment and services that operate independently of the primary system, (C) have current e-Filing Data stored on the primary system, and (D) have the ability to provide the Services during the performance of routine and remedial

maintenance or any outage or failure of the primary system. Contractor shall operate, monitor and maintain such fail-over system so that it may be activated within two (2) hours or less of any failure of the Services to be Available;

- (ix) Conduct contemporaneous backups of e-Filing Data and perform or cause to be performed other periodic backups of e-Filing Data and store such backup of e-Filing Data at the Secondary Backup Facility. On written notice from OCA, Contractor shall provide OCA with a copy of the backed up e-Filing Data in such machine readable format as OCA requests. No backup of e-Filing Data shall be counted in allotting or calculating any data storage actually used or permitted to be used by OCA or any associated payment or fee; and
- (x) In accordance with Texas Administrative Code, Title 13, Part 1, Chapter 6, Subchapter C, §6.94(a)(9) and the Statement of Work, provide to OCA the descriptions of its Disaster Recovery Plan. Contractor shall maintain the Disaster Recovery Plan for the Services and implement such Disaster Recovery Plan in the event of any unplanned interruption of the Services. Contractor shall actively test, review, and update the Disaster Recovery Plan at least on an annual basis using industry best practices, and provide OCA with copies of all reports and summaries resulting from any testing of or pursuant to the Disaster Recovery Plan within five (5) Business Days after Contractor's receipt or preparation thereof. Contractor shall provide OCA with copies of all such updates to the Disaster Recovery Plan within five (5) Business Days of its adoption. If Contractor fails to reinstate the Services within the period of time set forth in the Disaster Recovery Plan, OCA may, in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Agreement as a non-curable default.

- (b) **Industry Standards, Certifications and Compliance.** Contractor shall comply with industry standards and certifications applicable to the Services.

**7.4 Change Control.**

- (a) **Prohibition on Unauthorized Changes.** [\[Need to discuss how OCA sees this clause as fitting within regular updates or upgrades and changes required by cybersecurity purposes.\]](#) Contractor shall not, without OCA's prior written approval, which approval may be withheld in OCA's sole discretion, make any change that may (i) increase OCA's total cost of receiving the Services; (ii) require material changes to, or have an adverse impact on, any Authorized User's operations, facilities,

processes, systems, software, utilities, tools or equipment; (iii) require OCA or any Authorized Users to install, at its cost or expense, a new version, release, upgrade of or replacement for any Software or Equipment or to modify any Software or Equipment; (iv) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services; (v) have an adverse impact on the cost, either actual or planned, to OCA of terminating this Agreement, in whole or in part, or on OCA's rights to in-source or use third parties; (vi) have an adverse impact on OCA's or any Authorized User's environment (including its flexibility to deal with future changes, interoperability and its stability); (vii) introduce new technology to (A) OCA's or any Authorized User's environment or operations or (B) Contractor's environment, to the extent that such introduction has or may have an adverse impact on OCA's or any Authorized User's environment; (viii) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of the Services; (ix) increase the risk of Contractor not being able to provide the Services in accordance with this Agreement; or (x) violate or be inconsistent with OCA Standards or applicable Laws. If Contractor desires to make such a change, it shall provide to OCA a written risk assessment and mitigation plan.

- (b) **Financial Responsibility For Changes.** Unless otherwise set forth in this Agreement or otherwise expressly approved by OCA in writing, Contractor shall bear all charges, fees and costs associated with any change desired by Contractor, including all charges, fees and costs associated with (i) the design, installation, implementation, testing and rollout of such change, (ii) any modification or enhancement to, or substitution for, any impacted process or associated Materials, Equipment, System or Services, and (iii) any increase in the cost to OCA or to Authorized User of operating, maintaining or supporting any impacted process or associated Materials, Equipment, System or Services.
- (c) **Scheduled Downtime.** Contractor shall notify OCA at least 24 hours in advance of all scheduled outages of the Services in whole or in part ("**Scheduled Downtime**"). All such scheduled outages shall be in accordance with the Infrastructure Services Plan. Contractor may request OCA's approval for extensions of the Scheduled Downtime, which approval may be granted in OCA's sole discretion.
- (d) **Implementation of Changes.** Contractor shall schedule and implement all changes made in accordance with this **Section 7.4** so as not to materially (i) disrupt or adversely impact the operations of OCA, (ii) degrade the Services or any other services then being received by OCA, or (iii) interfere with OCA's ability to obtain the full benefit of the Services or any other services then being received by OCA.

- (e) **Planning and Tracking.** On a monthly basis, Contractor shall prepare, with OCA's participation and approval, a rolling quarterly "look ahead" schedule for ongoing and planned changes for the next three (3) months. The status of changes shall be monitored and tracked by Contractor against the applicable schedule.

## 7.5 Subcontractors.

- (a) **Use of Subcontractors.** Contractor shall not subcontract any of its direct responsibilities under this Agreement without OCA's prior written approval, which may be withheld in OCA's sole discretion. This section does not apply to subcontractors retained in the ordinary course by Contractor for general services provided to Contractor. Prior to entering into a subcontract with a third party for the Services, Contractor shall (i) deliver to OCA a copy of the proposed subcontract or, at OCA's reasonable discretion, a detailed description of scope and material terms of the proposed subcontract (other than charges thereunder, except to the extent such charges are the basis on which Charges are based), (ii) give OCA reasonable notice of the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor and the reasons for subcontracting the work in question, and (iii) obtain OCA's prior written approval of such Subcontractor.
- (b) **Right to Revoke Approval.** OCA may revoke its prior approval of a Subcontractor and direct Contractor to replace any Subcontractor in accordance with this **Section 7.5(b)** at no additional cost to OCA, if (i) Contractor fails to obtain the rights set forth in **Section 7.5(c)** with respect to such Subcontractor, or (ii) in OCA's discretion, there are other reasonable grounds for removal. Contractor shall, as soon as possible, remove and replace such Subcontractor. Contractor shall continue to perform its obligations under this Agreement, notwithstanding the removal of a Subcontractor. OCA shall have no responsibility for any termination charges or cancellation fees that Contractor may be obligated to pay to a Subcontractor as a result of the removal of such Subcontractor at OCA's request or the withdrawal or cancellation of the Services then performed by such Subcontractor as permitted under this Agreement.
- (c) **Contractor Responsibility.** Notwithstanding anything in this Agreement to the contrary, Contractor shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Contractor under this Agreement to the same extent as if such failure to perform or comply was committed by Contractor or Contractor Personnel. Without limiting the foregoing, Contractor warrants and covenants that in no event shall any provision of this Agreement, or any right or benefit of OCA provided for under this

Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, Charge or expense, including taxes) as a consequence of the performance of any Services by or through Subcontractors.

~~(d) **Historically Underutilized Businesses.** Within ten (10) days of the Effective Date, Contractor shall provide OCA a copy of the notification provided by Contractor to all selected subcontractors identified in Contractor's approved Historically Underutilized Business (HUB) Subcontracting Plan (HSP) as set forth in **Exhibit 5**. Within thirty (30) days of the Effective Date, Contractor shall meet with the OCA HUB Coordinator to discuss Contractor's HSP reporting requirements. During the Term, Contractor shall (i) maintain business records documenting compliance with the HSP, (ii) submit monthly HSP progress reports to the OCA HUB Coordinator, and (iii) report the amounts paid to all HUB subcontractors on the Texas Comptroller of Public Accounts' form located at: <https://comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>. In the event the Parties agree to amend the Statement of Work, OCA will reevaluate the Statement of Work to determine the probability of additional subcontracting opportunities. Prior to making any changes to the HSP, Contractor must obtain prior written approval from the OCA HUB Coordinator. Proposed changes or subsequent subcontracting must comply with the good faith effort requirements relating to the development and submission of an HSP.~~

## 7.6 Technology Evolution.

- (a) **Obligation to Evolve.** Contractor will cause the Services, Software and other assets used to deliver the Services, as approved by OCA, to evolve and be modified, enhanced, supplemented and replaced as necessary for the Services, Software and other assets used to deliver the Services to keep current with good industry ~~best~~ practices and a level of technology that is (i) compliant with all Laws applicable to Contractor in the performance of the Services; (ii) used by Contractors and other ~~top-tier~~ similarly situated providers in providing services similar to the Services to other customers; and (iii) in general use within the technology industry. Any changes to the Services, Software, and other assets used to deliver the Services implemented in accordance with this Section will be deemed to be included within the scope of the Services to the same extent and in the same manner as if expressly described in this Agreement, at no additional charge to OCA, and shall not be deemed to result in New Services unless the changes meet the definition of New Services.
- (b) **Obligation to Propose Technology Evolutions.** Contractor shall, throughout the Term, routinely (i) identify and apply best practice techniques, methods and technologies in the performance of the



Services, and (ii) make necessary investments to keep and maintain the Software and other assets used to deliver the Services at the level of currency defined in this Section. Subject to its non-disclosure obligation under other customer contracts, Contractor shall obtain information regarding Technology Evolution from other customer engagements and shall communicate such information to OCA on an ongoing basis.

- (c) **Contractor Briefings.** During regularly scheduled meetings with OCA, Contractor will inform OCA of (i) any investments, modifications, enhancements, and improvements that Contractor is required, or proposes, to make to the Services, Software, and other assets used to deliver the Services; (ii) new information processing technology or business processes Contractor is developing; (iii) any pending or actual changes in Law that could reasonably be expected to affect the provision or receipt of the Services; and (iv) technology or process trends and directions of which Contractor is otherwise aware that could reasonably be expected to have an impact on OCA's information technology operations or business.

## 8. OCA RESPONSIBILITIES

### 8.1 Savings Clause.

Contractor's failure to timely or otherwise perform its responsibilities under this Agreement (including failure to meet the Service Levels) shall be excused if, and only to the extent that, such Contractor non-performance or untimely performance is caused by (i) the wrongful or tortious actions or omissions of OCA, or (ii) the failure of OCA to perform their obligations under this Agreement, but only if and to the extent that Contractor (A) within ~~three (3) Business Days~~ reasonable time after discovery or of becoming aware of such an occurrence, notifies OCA of such wrongful or tortious action or failure to perform and Contractor's inability to perform under such circumstances, (B) provides OCA with reasonable opportunity to correct such wrongful or tortious action or failure to perform and thereby avoid such Contractor non-performance, (C) identifies and pursues commercially reasonable means to avoid or mitigate the impact of such wrongful or tortious action or failure to perform, (D) provides evidence to OCA of Contractor's pursuit of such means to avoid or mitigate the impact, (E) uses commercially reasonable efforts to perform notwithstanding such wrongful or tortious action or failure to perform (with OCA reimbursing Contractor for its additional reasonable out-of-pocket expenses incurred in connection with such effort; provided, however, that OCA has provided prior written approval of any such additional out-of-pocket expenses), and (F) Contractor conducts a Root Cause Analysis and thereby demonstrates that such wrongful or tortious action or failure to perform is the cause of Contractor's non-performance. Contractor acknowledges and agrees that the circumstances described in this **Section 8.1**, together with **Section 17.2**, are the only circumstances in which its failure to

perform its responsibilities under this Agreement or to meet the Service Levels shall be excused.

## 9. AUDITS AND BENCHMARKING [BEING REVIEWED.]

### 9.1 Audit Rights.

- (a) **Contract Records.** Contractor shall maintain complete and accurate contract records of, and supporting documentation for, all Charges, all e-Filing Data and all transactions, authorizations, changes, implementations, soft document accesses, work papers, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Contractor in the performance of its obligations under this Agreement (“**Contract Records**”). Contractor shall maintain such Contract Records in accordance with applicable Laws and the terms of this Agreement. Contractor shall retain Contract Records in a reasonably accessible format and location within the OCA environment, and in accordance with the applicable OCA record retention policy (as such policies may be modified from time to time and provided to Contractor in writing) during the Term and thereafter for a period of seven (7) years after the termination of the Contract or the resolution of all billing questions, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last (the “**Audit Period**”).
- (b) **Operational Audits.** During the Audit Period and upon reasonable notice to Contractor, Contractor shall provide to OCA (and to any internal and external auditors, inspectors, regulators and other representatives that OCA may designate from time to time, including customers, vendors, licensees and other third parties to the extent OCA is legally or contractually obligated to submit to audits by such Entities), the State Comptroller Claims Division and the State Auditor’s Office and any successor governmental authorities (collectively, “**OCA Auditors**”) access at reasonable hours to Contractor Personnel, the Contractor Sites at or from which Services are then being provided, and Contract Records and other pertinent information, all to the extent relevant to the Services and Contractor’s obligations under this Agreement; provided, however, that any such OCA Auditors agree to protect Contractor’s Confidential Information subject to applicable public information Laws. Such access shall be provided for the purpose of performing audits, evaluations, and inspections to (i) verify the integrity of e-Filing Data, (ii) examine the systems that process, store, support and transmit e-Filing Data (including system capacity, performance and utilization), (iii) examine Contractor’s internal controls (e.g., financial controls, human resources controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) and the security, disaster recovery and back-up practices and procedures,

- (iv) examine Contractor's performance of the Services, (v) verify Contractor's reported performance against the applicable Service Levels, (vi) examine Contractor's measurement, monitoring and management tools, and (vii) enable OCA to meet applicable legal, regulatory and contractual requirements. Contractor shall, in an expeditious manner to facilitate the timely completion of such audit, (A) provide any assistance reasonably requested by any OCA Auditors in conducting any such audit, including installing and operating audit software on systems dedicated to the provision of the Services, and (B) make reasonably requested Contractor Personnel, records and information available to OCA Auditors. If an audit reveals a material breach of this Agreement, Contractor shall, within thirty (30) days of OCA's request, reimburse OCA for reasonable auditors' fees including any reasonable auditors' fees to perform a follow-up audit to verify that such breach has been corrected.
- (c) **Cybersecurity Audits.** At least once per Contract Year, Contractor shall conduct Contractor Site audits of the information technology and information security controls for all facilities used in complying with its obligations under this Agreement, including obtaining a network-level vulnerability assessment performed by a recognized independent third-party audit firm based on recognized industry best practices. Additionally, Contractor will provide reasonable support for any cybersecurity audits or penetration testing of the System. Upon OCA's written request, Contractor shall make available to OCA for review all of the following, to the extent applicable: Contractor's latest Payment Card Industry Compliance Report, Statement on Standards for Attestation Engagements No. 18 audit reports for Reporting on Controls at a Service Organization, Service Organization Controls Type 1, 2, or 3 audit reports, and any reports relating to its ISO/IEC 27001 certification. Contractor shall promptly address any exceptions noted on the SOC reports, or other audit reports, with the development and implementation of a Corrective Action Plan by Contractor.
- (d) **Financial Audits.** During the Audit Period, Contractor shall provide to OCA Auditors access at reasonable hours to Contractor Personnel and to Contract Records and other pertinent information to conduct financial audits necessary to verify the Charges or validate other Contractor obligations under this Agreement, including the audit work papers of Contractor's auditor to the extent applicable to the Services and obtainable by Contractor, all to the extent relevant to the performance of Contractor's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the accuracy and completeness of Contract Records, (ii) verify the accuracy and completeness of Charges and any out-of-pocket expenses, (iii) examine the financial controls, processes and procedures utilized by Contractor in connection with the Services, (iv) examine Contractor's performance of its other financial and accounting obligations to OCA

under this Agreement, and (v) enable OCA to meet applicable legal, regulatory and contractual requirements, in each case to the extent applicable to the Services and/or the Charges for such Services. Contractor shall, in an expeditious manner to facilitate the timely completion of such audit, (A) provide any assistance reasonably requested by OCA Auditors in conducting any such audit, and (B) make reasonably requested Contractor Personnel, records and information available to OCA Auditors. If any such audit reveals an overcharge by Contractor, Contractor shall, either on the following month's invoice or within thirty (30) days of OCA's request, pay to OCA the amount of such determined overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Contractor of the overcharged amount until the date of payment to OCA. In addition, if any such audit reveals an overcharge of more than five percent (5%) of the Charges in any rolling three (3) month period, Contractor shall, within thirty (30) days following OCA's request, reimburse OCA for the cost of such audit.

(e) **Audits by Governmental Authorities.**

- (i) Notwithstanding any other provision of this Agreement, Contractor authorizes the State Auditor's Office and the State Comptroller Claims Division to access and examine, audit, excerpt and transcribe any books, documents, working papers and records of Contractor relating to this Agreement that, in the State Auditor's determination, are relevant to the State Auditor's investigation or audit. Contractor shall fully cooperate with and provide all assistance requested by the State Auditor's Office or the State Comptroller Claims Division in the conduct of such audits or investigations, including providing all records requested. This Agreement may be unilaterally amended by OCA upon notice to Contractor if required to bring this Agreement into compliance with any applicable Laws, rules, and procedures related to the auditing of entities that receive funds from the State.
- (ii) In addition to the third party audits specified in **Section 9.1(c)**, no more than once per State fiscal biennium and upon request by OCA, Contractor shall allow OCA and DIR to conduct security vulnerability assessments or penetration testing of the information technology and information security controls for all facilities used in complying with Contractor's obligations under this Agreement. Contractor will provide reasonable support for all such audits by OCA and DIR.

(f) **General Procedures.**

- (i) Contractor shall obtain audit rights equivalent to those specified in this **Section 9.1** from all Subcontractors (and in all events shall obtain such audit rights from all Subcontractors as required under the Texas Government Code or other applicable Law), and shall cause such rights to extend to OCA Auditors.
- (ii) In performing audits, OCA Auditors shall endeavor to avoid unnecessary disruption of Contractor's operations and unnecessary interference with Contractor's ability to perform the Services in accordance with the Service Levels.
- (iii) OCA Auditors shall be given adequate private workspace in which to perform an audit, including access to photocopiers, telephones, Internet connectivity, facsimile machines, computer hook-ups and any other facilities or equipment needed for the performance of the audit.
- (iv) As requested by OCA, Contractor shall provide OCA Auditors access to on-line view and notification components of any measurement and monitoring tools used by Contractor in connection with its delivery of the Services.
- (v) Contractor recognizes that OCA must comply with applicable Laws respecting procurement of services in connection with any engagement of an audit firm or other consultant for conducting the audits contemplated in this **Section 9.1**. To the extent permissible under such Laws and the reasonable practice of OCA, OCA shall consult with Contractor respecting the audit firm or other consultant and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, that OCA reserves the right to determine, in its sole discretion, the appropriate audit firm or consultant to be engaged and the arrangement for such engagement. Any OCA Auditor engaged by OCA to conduct an audit pursuant to **Section 9.1(b)** or **Section 9.1(d)** shall (A) be independent, (B) have in OCA's reasonable judgment, verifiable, demonstrated experience in conducting such audits, and (C) execute a non-disclosure agreement.
- (vi) OCA shall provide Contractor with notice at least five (5) Business Days prior to any operational or financial audit by an OCA Auditor; provided that no such notice shall be required with respect to audits conducted pursuant to **Section 9.1(e)** or to the extent limited due to extenuating circumstances. Notwithstanding the foregoing, to the extent OCA has advance notice of an audit to be conducted

pursuant to **Section 9.1(e)**, OCA shall provide reasonable notice of such audit to Contractor.

- (g) **Contractor Internal Audit.** At least once per Contract Year, Contractor shall conduct an internal audit, at its own cost and expense, to verify Contractor's adherence to the charging and payment terms of this Agreement. Within two (2) days following each such audit, Contractor shall provide OCA with the results of each such internal financial audit. If Contractor determines as a result of its own internal audit that it has overcharged OCA, then Contractor shall, either on the following month's invoice or within thirty (30) days following OCA's request, pay to OCA the amount of such overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Contractor of the overcharged amount until the date of payment to OCA.
- (h) **Contractor Response.** Contractor and OCA shall meet promptly upon the completion of any audit conducted pursuant to this **Section 9.1** (i.e. an exit interview) and/or issuance of an interim or final report to Contractor and OCA following such an audit. Contractor shall respond to each exit interview and/or audit report in writing within thirty (30) days, unless a shorter response time is specified in such report. Contractor and OCA shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations identified in such exit interview and/or audit report. Once such action plan is approved by OCA, Contractor, at its own expense, shall complete all remedial action in accordance with such action plan and the dates specified therein to the extent necessary to comply with Contractor's obligations under this Agreement. Upon request by OCA, Contractor shall provide OCA with detailed information regarding the status of any such remedial actions undertaken by Contractor.
- (i) **Contractor Response to External Audits.** If an audit by a governmental body, standards organization or regulatory authority having jurisdiction over OCA or Contractor results in a finding that Contractor is not in compliance with any applicable Law or standard, including any generally accepted accounting principle or other audit requirement relating to the performance of its obligations under this Agreement, Contractor shall, if and to the extent such audit deficiency or finding of non-compliance results from Contractor's failure to comply with its obligations under this Agreement, at its own expense and within the time period specified by such auditor, address and resolve the deficiency(ies) identified by such governmental body, standards organization or regulatory authority, in the manner approved by OCA, to the extent necessary to comply with Contractor's obligations under this Agreement.

**9.2 OCA Benchmarking Reviews. [Contractor disagrees that any of Section 9.2 should be included.]**

- (a) **Charges Benchmarking Review.** During the Initial Term or any Renewal Term, OCA may, at its expense and subject to this **Section 9.2**, engage the services of an independent third party (a “**Benchmark**er”) to compare the quality and price of all or any of the Services against the quality and price of well-managed suppliers performing similar services to determine whether OCA is receiving from Contractor pricing and levels of service that are competitive with market rates and prices, given the nature, volume and type of Services and Service Levels provided by Contractor hereunder (a “**Charges Benchmarking**”). Benchmarker shall consider comparable transactions by selecting a representative sampling of OCA’s Peer Group. Benchmarker shall further consider the following factors and normalize the pricing data as and to the extent appropriate: (i) whether supplier transition, transformation, and other charges are paid by the customer as incurred or over a period of time; (ii) the extent to which supplier pricing includes the purchase of the customer’s existing assets or assumption of any agreements; (iii) the extent to which supplier pricing includes any “gain-sharing” agreements or the cost of acquiring future assets; (iv) the extent to which this Agreement calls for Contractor to provide and comply with unique OCA requirements; (v) whether taxes are included in such pricing or stated separately in supplier invoices; (vi) the restrictions related to location of the delivery of the Services; (vii) differences in the volumes of the services being compared; (viii) applicability of service levels; and (ix) material differences in terms and conditions.
- (b) **Qualifications.** Any Benchmarker engaged by OCA shall (i) be independent, (ii) have in OCA’s reasonable judgment, verifiable, demonstrated experience in benchmarking services similar to the Services, and (iii) execute a non-disclosure agreement; provided, however, that notwithstanding the terms of the non-disclosure agreement, Contractor agrees and acknowledges that such Benchmarkers shall be permitted to anonymously use and analyze data obtained in connection with any Benchmarking services performed on behalf of OCA. Contractor recognizes that OCA must comply with applicable Laws respecting procurement of services in connection with any engagement of a Benchmarker. To the extent permissible under such Laws and the reasonable practice of OCA, OCA shall consult with Contractor respecting the Benchmarker and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, that so long as the Benchmarker possesses the qualifications set forth in this **Section 9.2(b)**, OCA reserves the right to determine, in its sole discretion, the appropriate Benchmarker to be engaged and the arrangement for such engagement. Contractor shall cooperate fully with

OCA and the Benchmarker and shall provide reasonable access to any premises, equipment, personnel or documents and provide any assistance reasonably required by the Benchmarker to conduct the Benchmarking, all at Contractor's cost and expense; provided, however, that Contractor shall not be obligated to provide the Benchmarker with Contractor's internal costs or information concerning other Contractor customers.

- (c) **Contractor Review and Dispute.** Benchmarker shall provide OCA and Contractor with a copy of the Benchmarker's draft report and Contractor shall have fifteen (15) Business Days to review such report and provide any feedback or modifications it reasonably determines are appropriate. Benchmarker shall update the report to include such reasonable modifications requested by Contractor and shall issue its final report. If the Parties are unable to agree upon the validity of such findings, the matter shall be resolved pursuant to the dispute resolution procedures set forth in **Article 18**.
- (d) **Result of Benchmarking.** If the Benchmarker finds that the aggregate Charges that are the subject of the Benchmarking are greater than the lowest twenty-five percent (25%) of the prices charged by well-managed suppliers for work of a similar nature, type or volume, then Contractor shall, within fifteen (15) Business Days from written request, reimburse OCA for its costs associated with such Benchmarking and the Parties shall work together to eliminate any such unfavorable variance to the Charges. Under no circumstances shall Benchmarking result in any increase to the Charges. The Benchmarker shall reasonably explain its methodology, including its use of relevant comparative data in the Benchmarker's report. OCA shall instruct the Benchmarker to conduct the Benchmark so as not to unreasonably disrupt Contractor's operations under this Agreement.

## 10. FEES

### 10.1 General.

- (a) **Payment of Charges.** In consideration of Contractor's performance of the Services and in accordance with Chapter 2251, Texas Government Code, OCA shall pay the Charges to Contractor.
- (b) **No Additional Charges.** Unless expressly set forth in this Agreement or in **Exhibit 4** as a responsibility of OCA, there shall be no charges, fees, expenses or other amounts payable to Contractor for the provision of Services. Any costs incurred by Contractor prior to the Effective Date are included in the Charges and are not to be separately paid or reimbursed by OCA.



- (c) **Incidental Expenses.** Contractor acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Contractor incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, equipment and software required by Contractor Personnel, and long-distance telephone) are included in the Charges as set forth in **Exhibit 4**. Accordingly, such Contractor expenses shall not be separately paid or reimbursed by OCA.
- (d) **Charges for Contract Changes.** Unless otherwise agreed, changes in the Services shall result in changes in the applicable Charges only if and to the extent (i) this Agreement expressly provides for a change in the Charges in such circumstances; (ii) the agreed upon Charges or pricing methodology expressly provides for a price change in such circumstances; or (iii) such change meets the definition of New Services and additional Charges are applicable in accordance therewith.
- (e) [Charges for Renewal Terms. The Charges for any Renewal Term will be set based on the criteria set forth in Exhibit 4.](#)
- (f) ~~(e)~~ **Efforts to Minimize.** Throughout the Term, Contractor shall continually seek to identify methods of reducing and minimizing OCA's total cost of receiving the Services and shall notify OCA of such methods and the estimated potential savings associated with each such method.

## 10.2 Taxes.

Pursuant to Section 151.309, Texas Tax Code, OCA is exempt from the assessment of State taxes and, pursuant to Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter O, §3.322(c)(4), is not required to present an exemption certificate with respect to State sales tax. In addition, OCA is exempt from federal taxes pursuant to 26 U.S.C. §§ 4253(i) and (j). Except as set forth in this **Section 10.2** or **Exhibit 4**, Contractor shall not include any taxes in the Charges. Without limiting the generality of the foregoing, Contractor's responsibilities in connection with taxes arising under or in connection with this Agreement include the following obligations:

- (a) **Income Taxes.** Contractor shall be responsible for its own Income Taxes.
- (b) **Sales, Use and Property Taxes.** Contractor shall be responsible for any sales, lease, use, personal property, real or improved property, stamp, duty or other such taxes on Equipment, Materials or property it owns or leases or licenses from a third party, including any lease or license assigned pursuant to this Agreement.
- (c) **Taxes on Goods or Services Used by Contractor.** Contractor shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by

Contractor on any goods or services used or consumed by Contractor in providing the Services where the tax is imposed on Contractor's acquisition or use of such goods or services and the amount of tax is measured by Contractor's costs in acquiring or procuring such goods or services and not by OCA's cost of acquiring such goods or services from Contractor.

- (d) **Service Taxes.** Contractor shall be financially responsible for all Service Taxes. As a result of OCA's exempt status, Contractor shall not charge OCA sales tax on the Services.
- (e) **Withholding.** Any withholding tax or other tax of any kind that OCA is required by applicable Law to withhold and pay on behalf of Contractor with respect to amounts payable to Contractor under this Agreement shall be deducted from said amount prior to remittance to Contractor. OCA shall provide to Contractor reasonable assistance, which shall include the provision of documentation as required by revenue authorities, to enable Contractor to claim exemption from or obtain a repayment of such withheld taxes and shall, upon request, provide Contractor with a copy of the withholding tax certificate.
- (f) **Tax Filings.** Contractor represents, warrants and covenants that it shall file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in all applicable jurisdictions. At OCA's request, Contractor shall provide OCA with (i) written confirmation that Contractor has filed all required tax forms and returns and has collected and remitted all applicable amounts, and (ii) such other information pertaining to applicable Taxes as OCA may reasonably request.

### 10.3 Extraordinary Events.

- (a) **Definition.** As used in this Agreement, "**Extraordinary Event**" means (1) a circumstance in which an event or discrete set of events has occurred or is planned with respect to the operations of OCA that results or shall result in a substantial change in the scope, nature, utilization or volume of the Services, or (2) a material change in the technologies and/or processes available to provide all or any portion of the Services which is outside the normal evolution of technology experienced by the Services, that was not generally available as of the Effective Date and that would materially reduce Contractor's cost of providing the Services. Examples of the kinds of events that might cause such substantial or material changes include, but are not limited to, the following:
  - (i) changes in applicable Laws; and
  - (ii) changes in OCA's policy, technology or processes.

- (b) **Consequence.** If an Extraordinary Event occurs, OCA may, at its option and upon written notice to Contractor, request more favorable pricing with respect to applicable Charges in accordance with the following:
- (i) Contractor and OCA shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions, if any, resulting from such Extraordinary Event and, upon OCA's approval, Contractor shall then proceed to implement such efficiencies, economies, savings and resource utilization reductions as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges in **Exhibit 4** shall be promptly and equitably adjusted to pass through to OCA the net benefit of such efficiencies, economies, savings and resource utilization reductions in the manner mutually agreed by Contractor and OCA.
  - (ii) An Extraordinary Event shall not result in Charges to OCA being higher than such Charges would have been if other rates and Charges specified in **Exhibit 4** had been applied.

If the Parties cannot agree on an equitable adjustment to the Charges in accordance with this Section within thirty (30) days after Contractor's receipt of notice of the Extraordinary Event, OCA shall have the right to terminate the Agreement, in whole or in part, by written notice to Contractor, effective as of the date set forth in such notice. OCA shall pay Contractor the amounts set forth in Exhibit 4 as a termination charge.

#### 10.4 Proration.

Contractor shall compute periodic Charges under this Agreement on a quarterly basis, and shall prorate such Charges for any partial quarter on a daily basis.

#### 10.5 ~~Pricing Commitment.~~ Reserved.

- ~~(a) Contractor's Charges to OCA for Services to be provided under this Agreement shall be at least as low as Contractor's lowest fees, under agreements entered into directly between Contractor and other State governmental entities or agencies, for the same or substantially similar services provided at similar volumes.~~
- ~~(b) Twelve (12) months prior to the end of the Initial Term, Contractor shall conduct a competitive price assessment. The assessment shall first identify whether there are any agreements between Contractor and other entities meeting the criteria in Section 10.5(a) above and then, assuming there are such agreements, shall proceed to assess the price competitiveness of this Agreement with up to three (3) such agreements~~

~~selected by OCA from a list of candidates presented by Contractor, taking into account the type of normalization factors referenced in **Section 10.5(a)** to ensure a like-for-like comparison. At the conclusion of the assessment, either (i) Contractor shall verify that the assessment has been completed and no adjustment is required for the Charges to be brought in line with lower fees or (ii) Contractor shall identify any relevant variance, offer a plan to enable Contractor to reduce the Charges so that they are brought in line with the lower fees, and reduce such Charges prospectively from the date of verification of the relevant variance. OCA shall be allowed to review and approve such plan, and in all events Contractor shall implement the relevant Charges reductions no later than thirty (30) days from the date of OCA's approval of such plan. The provisions of **Section 9.1** shall not apply to the assessment conducted in accordance with this **Section 10.5**.~~

~~(c) If at any time OCA becomes aware of any agreement that it believes would appropriately be subject to the assessment described in this **Section 10.5**, OCA may call such agreement to Contractor's attention, and the Parties shall discuss in good faith whether a competitive price assessment in accordance with **Section 10.5(b)** is appropriate in the circumstances.~~

## 11. INVOICING AND PAYMENT

### 11.1 Invoicing.

- (a) **Invoice for Implementation Services.** Contractor shall invoice OCA for Accepted Deliverables. The invoice shall include (i) OCA's purchase order number, (ii) the vendor identification number, (iii) the name of the Deliverable and each outcome of the Deliverable for which payment is requested, (iv) the pricing set forth in the Statement of Work for such Deliverable, and (v) supporting information as identified in the Statement of Work, or other support as OCA may require. No payment shall be made without the submission of detailed, correct invoices. Contractor shall submit invoice after Acceptance of the Deliverable by OCA. Invoices for Implementation Services provided by Subcontractors shall be paid by the Contractor, then invoiced to OCA.
- (b) **Invoice for Production Services.** Following the Commencement Date, Contractor shall invoice OCA for Production Services no sooner than 30 days following the completion of each OCA Fiscal Quarter. Thereafter, Contractor shall present OCA with the quarterly invoice for the preceding OCA Fiscal Quarter (the "**Quarterly Invoice**"). Contractor shall not invoice OCA for taxes or any backdated Charges that Contractor failed to invoice to OCA within four (4) invoice cycles following the month in which the Charges were incurred. To the extent that any Charges included in the Quarterly Invoice are disputed by OCA, such dispute shall be resolved in

accordance with **Section 11.3**. Until Implementation Services are complete, Contractor shall invoice only at an amount of 25% of the Quarterly Invoice.

- (c) **Form and Data.** Each invoice provided by Contractor to OCA under this Agreement shall be submitted electronically to [accountspayable@txcourts.gov](mailto:accountspayable@txcourts.gov), or by hard copy to The Office of Court Administration, ATTN: Accounts Payable, P.O. Box 12066, Austin, Texas 7871-2066, and shall (i) comply with all applicable legal, regulatory and accounting requirements, including Chapter 2251, Texas Government Code, (ii) allow OCA to validate the Charges, and (iii) comply with OCA's accounting and billing requirements, including providing sufficient detail for OCA to allocate costs to all federal and State programs in accordance with the relative benefits received and to make federal claims according to the federal cost plan of OCA (if any).
- (d) **Reimbursements.** To the extent a Service Level Reimbursement, Deliverable Fee or other reimbursements or fees may be due to OCA pursuant to this Agreement, OCA shall invoice Contractor with the appropriate amounts then due and owing.
- (e) **Time Limitation.** Unless otherwise requested by Contractor in advance and agreed by OCA in its sole discretion, if Contractor fails to provide an invoice to OCA for any amount within four (4) invoice cycles of the month in which the Services in question are rendered or the expense incurred, Contractor shall waive any right it may otherwise have to invoice for and collect such amount.

## **11.2 Set Off.**

OCA may set off against any and all amounts to be paid or reimbursed by OCA any amount that Contractor is obligated to pay OCA hereunder, provided that OCA notifies Contractor in writing of the amounts of, and the basis for, such set off.

## **11.3 Disputed Charges.**

- (a) **Disputed Amounts.** OCA may withhold any amount of any invoice in dispute as provided in and in accordance with Chapter 2251, Texas Government Code. OCA shall comply with Chapter 2251, Texas Government Code, with respect to timely notice of such disputed amounts.
- (b) **Interest.** For invoice amounts that have been paid by OCA that become the subject of a dispute which is resolved in favor of OCA, in addition to any amounts that Contractor may subsequently reimburse to OCA arising from resolution of such dispute, Contractor shall include interest on the

amounts to be reimbursed, accrued monthly at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, calculated from the ninetieth (90th) day following the date of OCA's dispute.

- (c) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right OCA may otherwise have to dispute any Charge or amount or recover any amount previously paid.
- (d) **Prompt Resolution.** In the event OCA initiates a dispute related to an invoice, Contractor shall promptly (but not more than two (2) Business Days from the time OCA initiated such dispute) respond to the issue raised in such dispute, which response shall include a written explanation of the charges that are the subject of such dispute, as well as any supporting documentation necessary to support Contractor's position. If, within ten (10) days of the date on which OCA notifies Contractor of the dispute, Contractor has either (i) failed to respond to OCA with sufficient details or (ii) failed to provide documentation or other evidence as to the validity of the charges, then such dispute will be deemed resolved in favor of OCA, the appropriate credits against the unpaid invoice will be withheld and the matter closed.

## 12. E-FILING DATA AND OTHER CONFIDENTIAL INFORMATION.

### 12.1 Confidentiality.

- (a) **Confidential Information.** Contractor and OCA each acknowledge that the other possesses and shall continue to possess information that has been developed or received by it, has commercial, proprietary or other value in its or its constituents' or customers' activities or operations and is not generally available to the public, subject, however to the applicability of Rule 12 of the Rules of Judicial Administration and other applicable Law.
- (b) **Disclosure of Confidential Information.**
  - (i) During the Term and at all times thereafter as specified in **Section 12.5**, each Receiving Party (A) shall hold Confidential Information received from a Disclosing Party in confidence and shall use such Confidential Information only for the purposes of fulfilling its obligations or exercising its rights under this Agreement and for no other purposes, (B) shall follow all applicable security requirements, protocols, and procedures for accessing and handling such Confidential Information, and (C) shall not disclose, provide, disseminate or otherwise make available any Confidential Information of the Disclosing Party to any third party without the

express written permission of the Disclosing Party, unless expressly permitted by **Sections 12.1(b)(ii)** and **12.1(b)(iii)** below or elsewhere in this Agreement. Subject to the requirements of **Section 12.2(b)**, as applicable, each Receiving Party shall use at least the same degree of care to prevent disclosure, dissemination, and misuse of the Disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.

- (ii) The Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, directors, attorneys, financial advisors, contractors and agents (including OCA Auditors in the case of OCA) provided that (A) such person or Entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or Entity that is no less stringent than that set forth in this **Section 12.1**, and (C) such disclosure is not in violation of Law or applicable OCA Standards. The Receiving Party assumes full responsibility for the acts or omissions of any person or Entity to whom it discloses Confidential Information of the Disclosing Party regarding their use of such Confidential Information and must take commercially reasonable measures to protect the Confidential Information from disclosure or use in contravention of this Agreement.
- (iii) The Receiving Party may disclose Confidential Information of the Disclosing Party as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request (but not more than two (2) days from receipt of such request), the Receiving Party, to the extent it may legally do so, gives notice to the Disclosing Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that the Disclosing Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information. The Receiving Party shall use reasonable efforts to cooperate with the Disclosing Party in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment shall be accorded such Confidential Information.

- (iv) Unless expressly permitted by this Agreement, neither Party shall (A) make or use any copies of the Confidential Information of the other Party except as expressly contemplated by this Agreement, (B) possess or acquire any right in or assert any lien against the Confidential Information of the other Party, (C) sell, assign, transfer, lease, encumber or otherwise dispose of or disclose the Confidential Information of the other Party to third parties or commercially exploit, or permit a third party to commercially exploit, such information, or (D) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including any copies thereof) to the other Party if requested to do so.
- (v) Notwithstanding the provisions of this **Section 12.1(b)**, OCA may disclose Confidential Information relating to the financial or operational terms of this Agreement and/or Contractor's performance hereunder (e.g., applicable Service Levels and measurements of Contractor's performance with respect to such Service Levels) in connection with a Benchmarking or the solicitation of proposals for or the procurement of the same. To the extent allowed by applicable Law, OCA shall promptly provide Contractor written notice of any such disclosure.
- (vi) Each Party shall take all necessary steps to cause its employees, contractors and subcontractors to comply with the provisions of **Article 12**.
- (c) **Exclusions.** Notwithstanding the above, **Section 12.1(b)** shall not apply to any particular information which the Receiving Party can demonstrate (i) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (ii) after disclosure to it, is published by the Disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations or through a third party or a party affiliated with the Receiving Party who obtained the information from the Receiving Party; (iii) was lawfully in the possession of the Receiving Party immediately prior to the time of disclosure to it by Disclosing Party; (iv) is received from a third party that is not restricted from disclosing such information by law, contract, fiduciary duty, or otherwise; or (v) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information.
- (d) **Loss of Confidential Information.** Each Party shall (i) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Confidential Information in contravention of this



Agreement, (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss, (iii) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights, and (iv) promptly use appropriate efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this **Section 12.1(d)**.

- (e) **No Implied Rights.** Nothing contained in this **Section 12.1** shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Confidential Information of the other Party.
- (f) **Return or Destruction of Confidential Information.** Each Party shall securely store the other Party's Confidential Information until such Confidential Information, other than e-Filing Data, is returned or destroyed as described in this **Section 12.1(f)**, or in the case of e-Filing Data, destroyed in accordance with **Section 12.2(c)**. Except as limited by applicable Laws and as provided below with respect to Contract Records, each Party shall destroy all other documentation in any medium that contains, refers to or relates to the other Party's Confidential Information and any copies thereof in such Party's control or possession (or the portion of such Confidential Information specified by the other Party) within fifteen (15) Business Days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder, including, with respect to Contractor, all periods of Termination Assistance Services requested by OCA. Upon written request, the Party returning or destroying the other Party's Confidential Information shall deliver to the other Party written certification of its compliance with this paragraph signed by an authorized representative of such Party. Notwithstanding the foregoing, either Party may retain one copy of the other Party's Confidential Information, other than e-Filing Data, in its legal department as and to the extent required to comply with applicable Laws or enforce its rights under this Agreement; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable Law, the expiration of the applicable statute of limitations or the final resolution of any pending dispute, as applicable. Contract Records shall be retained by Contractor for the duration of the Audit Period unless and to the extent Contractor is directed by OCA to deliver such Contract Records to OCA prior to the expiration of the Audit Period. In no event shall a party withhold any Confidential Information of the other party as a means of resolving any dispute.

- (g) **Transfer of OCA Confidential Information.** Contractor shall not transfer OCA Confidential Information to any other locations, nor change the locations for storage and processing of such OCA Confidential Information, except with the express written consent of OCA, which OCA may withhold in its sole discretion.

## **12.2 e-Filing Data.**

Nothing in this **Section 12.2** is intended to limit the obligations of Contractor under **Section 12.1** of this Agreement with respect to the Confidential Information addressed in such Section.

- (a) **e-Filing Data.** Except solely for the purpose of performing its obligations under this Agreement, Contractor shall not use, sell, license, assign, lease, transfer, distribute, or encumber e-Filing Data. Contractor shall not disclose to, or allow access by, third parties to e-Filing Data, unless expressly provided for in this Agreement or upon prior written consent of OCA. Contractor shall not directly or indirectly commercially exploit, or permit a third party to commercially exploit, e-Filing Data on behalf of Contractor or any other person or Entity. Upon OCA's request, and in the form and format as reasonably requested by OCA, Contractor shall make e-Filing Data available to OCA. Contractor agrees that Contractor shall not, and shall cause Contractor Personnel to not, use any e-Filing Data for any purpose other than the fulfillment of the terms and conditions of this Agreement.
- (b) **Safeguarding of e-Filing Data.**
- (i) Contractor shall implement and maintain throughout the Term a written, comprehensive data security program, which shall (A) include reasonable and appropriate technical, organizational and security measures and safeguards to protect e-Filing Data from unauthorized access, acquisition, disclosure, destruction, alteration, accidental loss, misuse, or damage, (B) be no less rigorous than those maintained (or required to be maintained) by OCA, (C) be no less rigorous than those maintained by Contractor for its own information of a similar nature, (D) be no less rigorous than best security standards in the industry (e.g., Texas Administrative Code, Title 1, Part 10, Chapter 202), but without limiting Contractor's obligations respecting Technology Evolution, and (E) comply (without limiting the Parties' obligations under **Section 14.10**) with all applicable OCA Standards, including the requirements of OCA's then-current privacy, security and records retention policies, including OCA's Information Security Policy Manual, the Internal Revenue Service guidelines contained within IRS Publication 1075 (<http://www.irs.gov/pub/irs-pdf/p1075.pdf>), viewed at least annually. Contractor shall permit OCA or its designee(s) and OCA Auditors to

review such documentation and/or to inspect Contractor's compliance with these provisions in accordance with **Section 9.1**. All e-Filing Data shall reside on Systems within the United States of America at all times.

- (ii) Under no circumstances shall Contractor make any changes that materially weaken any technical, organizational or security measures in place to safeguard e-Filing Data, or result in Contractor's failure to meet any of the minimum standards set forth above without OCA's prior approval. Under no circumstances shall Contractor or Contractor Personnel use, access, attempt to use or access, or permit use of or access to, e-Filing Data except as may be required for the performance of Contractor's obligations or otherwise permitted under this Agreement.
  - (iii) To the extent Contractor removes e-Filing Data from any media that is taken out of service that is under Contractor's control, Contractor shall destroy or securely erase such media. Under no circumstances shall Contractor use or re-use media on which e-Filing Data has been stored to store data of any other customer of Contractor or to deliver data to a third party, including another Contractor customer.
- (c) **Destruction of e-Filing Data.** Contractor shall securely store e-Filing Data until such e-Filing Data is returned or destroyed as described in this **Section 12.2(c)**. Except as limited by applicable Laws, Contractor shall return then permanently delete or destroy all e-Filing Data and all other documentation in any medium as requested by OCA that contains, refers to or relates to the e-Filing Data and any copies thereof in Contractor's control or possession within fifteen (15) Business Days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder, including all periods of Termination Assistance Services requested by OCA. Contractor shall deliver to OCA written certification of its compliance with this paragraph signed by an authorized representative.
- (d) **Contractor Personnel.** Contractor shall take appropriate action to cause any Contractor Personnel who have access to e-Filing Data pursuant to this Agreement to be (i) advised of, and comply with, the terms and conditions of this **Section 12.2**; and (ii) trained regarding their handling of such e-Filing Data. Contractor shall be responsible for any failure of Contractor Personnel to comply with the terms and conditions regarding e-Filing Data set forth in this **Section 12.2**. Contractor agrees to maintain a disciplinary process to address any unauthorized access, use or disclosure of e-Filing Data by any Contractor Personnel.

### 12.3 Cardholder Data.

To the extent applicable to the Services, Contractor shall comply with the Payment Card Industry Data Security Standard with respect to Cardholder Data as defined therein.

### 12.4 Security Incident.

- (a) **Procedures.** In the event Contractor discovers or is notified of, or should have known of, a Security Incident or potential Security Incident, Contractor shall immediately notify OCA of such Security Incident or potential Security Incident. Following such notice, Contractor shall fully cooperate in OCA's handling of such Security Incident or potential Security Incident and, at Contractor's own cost and expense, shall (i) investigate such Security Incident or potential Security Incident, facilitating interviews with Contractor Personnel and others involved in the matter, and making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable Laws, regulations, industry standards or as otherwise reasonably required by OCA, (ii) perform a risk assessment, Root Cause Analysis and Corrective Action Plan thereon in accordance with **Section 5.3(b)**, (iii) provide a detailed written report to OCA of such risk assessment, Root Cause Analysis and Corrective Action Plan, (iv) upon OCA's approval, remediate the effects of such Security Incident or potential Security Incident as soon as practicable or assist in the coordination of such remediation if Contractor does not have responsibility for the matters which are the source of the breach or potential breach, (v) provide OCA with reasonable assurances that such Security Incident or potential Security Incident shall not recur, (vi) cooperate with OCA in providing any notices regarding impermissible disclosures caused by such Security Incident which OCA deems appropriate, and (vii) cooperate in any litigation, investigation, or other action deemed necessary by OCA to protect its rights relating to the use, disclosure, protection and maintenance of e-Filing Data. Following any Security Incident, Contractor shall continuously use its best efforts to prevent a recurrence of any such Security Incident.
- (b) **Security Incident Involving e-Filing Personal Data.** To the extent a Security Incident involves e-Filing Personal Data and is attributable to a breach by Contractor or Contractor Personnel of Contractor's obligations under this Agreement, Contractor shall bear the costs incurred by Contractor in complying with its legal obligations relating to such Security Incident and, in addition to any other damages for which Contractor may be liable under this Agreement, Contractor shall reimburse OCA for all actual costs incurred in providing (i) notice to affected individuals, (ii) such affected individuals with credit monitoring services for thirty-six (36) months (where such Security Incident results in the potential for exposure of Highly-Sensitive Personal Information), (iii) such affected individuals

with \$50,000 of identity theft insurance, (iv) call center support for such affected individuals for thirty (30) days, (v) any related governmental fees or fines assessed against OCA, (vi) any Losses for which Contractor would be liable under **Section 16.1**, and (vii) any other services that OCA deems necessary to protect such affected individuals in light of the risks posed by such Security Incident.

- (c) **Third Party Notices.** Contractor agrees that it shall not inform any third party of any Security Incident without first obtaining OCA's prior written consent, other than to inform a complainant that the matter has been forwarded to OCA's legal counsel. Further, Contractor agrees that OCA shall have the right to determine (i) whether notice of the Security Incident is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in OCA's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
- (d) **Ongoing Obligations.** Contractor agrees to maintain and preserve all documents, records and other data related to any Security Incident.
- (e) **FTI Compliance.** To the extent applicable to the Services, Contractor shall comply with all applicable state and federal requirements and regulations, including ITS Publication 1075.

## 12.5 Survival.

Notwithstanding the expiration or any termination of this Agreement, (i) the limitations on use and disclosure by Contractor under this Article with respect to e-Filing Data shall survive the expiration or any termination of this Agreement and shall be perpetual and (ii) other than the foregoing with respect to the survival of e-Filing Data, each Party's confidentiality obligations under this Agreement shall continue for any period required by applicable Law or, in the absence of a required period, perpetually until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the Receiving Party or any agent, employee or Affiliate thereof.

## 12.6 Requirements for Information in Legal Proceedings.

- (a) **Preservation of Legal Privilege.** If OCA notifies Contractor, or Contractor is or becomes otherwise aware, that particular OCA Confidential Information may be within OCA attorney-client or work-product privileges of OCA, then regardless of any applicable exclusions, Contractor (i) shall not disclose such OCA Confidential Information or take any other action that would result in waiver of such privileges and (ii) shall instruct all Contractor Personnel who may have

access to such communications to maintain privileged material as strictly confidential and otherwise protect OCA privileges.

- (b) **Contractor Responsibility for OCA Confidential Information.** To the extent requested by OCA, Contractor shall comply with OCA's litigation response plan, including policies and procedures to prepare for and respond to discovery requests, subpoenas, investigatory demands, and other requirements for information related to legal and regulatory proceedings, as such plan may be revised from time to time, including preparing for and complying with requirements for preservation and production of data in connection with legal and regulatory proceedings and government investigations. Within one (1) Business Day following receipt of any request, demand, notice, subpoena, order or other legal information request relating to legal proceedings or investigations by third parties relating to any Materials, Deliverables, Work Product, OCA Confidential Information or related Systems in Contractor's possession, Contractor shall notify OCA and provide OCA with a copy of all documentation of such legal information request, to the extent Contractor legally may do so and shall cooperate with OCA in responding to such request, demand, notice, subpoena, order or other legal information request.
- (c) **Cost of Compliance.** Contractor's cost of complying with this **Section 12.6** shall be at no additional charge to OCA.

### 13. LICENSE GRANT AND MATERIALS

#### 13.1 Contractor Owned and Licensed Materials.

- (a) **Ownership of Contractor Owned Materials.** As between the Parties, Contractor shall be the sole and exclusive owner of the (i) Materials and other intellectual property lawfully owned by it or its Affiliates prior to the Effective Date, (ii) Materials and other intellectual property acquired by Contractor or its Affiliates on or after the Effective Date other than Materials and other intellectual property obtained by Contractor or its Affiliates from third parties for or on behalf of OCA, and (iii) Materials and other intellectual property that are developed by or on behalf of Contractor pursuant to this Agreement or otherwise paid for by OCA under this Agreement (collectively, "**Contractor Owned Materials**"), including all Intellectual Property Rights in the Contractor Owned Materials.
- (b) **License to Contractor Owned Materials.** As of the Effective Date, Contractor hereby grants to OCA during the Term, at no additional charge, a world-wide, non-exclusive, irrevocable during the term of this Agreement (provided that Contractor Owned Materials are used in accordance with the terms hereof), royalty-free right and license to use, with the right to allow an unlimited number of Authorized Users to use the

Services, the Contractor Owned Materials (including all modifications, replacements, upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto), including to (i) receive the full benefit of the Services, (ii) perform or have performed services of the nature of the Services, including in-scope processes and services, (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services, and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. Contractor Owned Materials shall remain the property of Contractor. OCA shall not (A) reverse engineer, decompile, or disassemble the source code of all or any portion of the Contractor Owned Materials or (B) use the Contractor Owned Materials for the benefit of any Third Party. To the extent any provision of this Agreement creates an ambiguity or a conflict with any terms or conditions of any agreement or license (by “click-through” or written acceptance) by the Courts and Authorized Users, the provisions of this Agreement shall control.

- (c) **License to Contractor Third Party Materials.** As of the Effective Date, and subject to Contractor having obtained any Required Consents, Contractor hereby grants to OCA during the Term, at no additional charge, a world-wide, non-exclusive, irrevocable (provided that the Third Party Materials are used in accordance with the terms hereof), royalty-free right and license to use, ~~with the right to grant sublicenses to third parties to use for the benefit of OCA and its Authorized Users,~~ the Third Party Materials for which Contractor holds the license or for which Contractor is financially responsible under this Agreement (including all modifications, replacements, upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto) for the benefit of OCA, including to (i) receive the full benefit of the Services, (ii) perform or have performed services of the nature of the Services, including in-scope processes and Services, (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services, and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. To the extent any provision of this Agreement creates an ambiguity or a conflict with any terms or conditions of any agreement covering Third Party Materials or provided by Contractor relating to the Services, the provisions of this Agreement shall control.
- (d) **Embedded and Dependent Materials.** Contractor hereby grants to OCA a world-wide, non-exclusive, perpetual, irrevocable during the term of this Agreement, royalty-free right and license to use by OCA or any Authorized Users any embedded Contractor Owned Materials or Third Party Materials (including all modifications, replacements, upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto). ~~Following the expiration or any termination of this~~

~~Agreement and the termination of the Service(s) for which such Contractor Owned Materials were used, Contractor shall, at OCA's request, provide upgrades, maintenance, support and other services for such Contractor Owned Materials or Third Party Materials.~~

- (e) [Note: This is a SaaS Product and is limited in time. Contractor can discuss this issue further, but the clauses (e) and (f) are written for perpetual licenses and need to be adapted.] **Source Code Escrow for Contractor Owned Materials.** Upon OCA's request and provided that Contractor has not previously delivered current versions of source code and related documentation to OCA for certain specified Contractor Owned Materials, Contractor shall deposit in escrow, with an escrow agent selected by OCA, source code and related documentation for specified Contractor Owned Materials ("**Source Code Deposit Materials**"). In the event that any of the following occur (each a "**Release Event**"), such Source Code Deposit Materials shall be released:
- (i) in the case that Contractor is the named debtor in any bankruptcy or insolvency proceeding; or
  - (ii) in the case that Contractor has made a general assignment for the benefit of its creditors.
- (f) **Escrow License Grant.** Contractor hereby grants OCA a non-exclusive, royalty-free, irrevocable, transferable, and sublicensable, right and license to possess, control, and use the source code and object code, and to reverse engineer, disassemble, decompile, decode, adapt, develop, modify, and maintain the Services (including source code and object code) and make any related modifications to the Specifications, and use all resulting corrections, repairs, translations, enhancements, and other derivative works and improvements for and in connection with OCA's performance of the Services, in each case solely upon and after the occurrence of a Release Event.

### 13.2 Work Product; Other Materials.

All Work Product shall be owned by OCA. OCA shall have all right, title and interest in and to the Work Product and all copies made therefrom. To the extent any Work Product is not deemed a "**work made for hire**" by operation of law, Contractor hereby irrevocably assigns, transfers and conveys, and shall cause its employees, contractors and agents to assign, transfer and convey, to OCA without further consideration all of its and their right, title and interest in and to such Work Product, including all rights of copyright, trade secret, moral rights and other similar rights in such materials. Contractor acknowledges, and shall cause its employees, contractors and agents to acknowledge, that OCA and the successors and permitted assigns of OCA shall have the right to obtain and hold in their own name any such intellectual property rights in and to such Work



Product. Contractor agrees to execute, and shall cause its employees, contractors and agents to execute, any documents or take any other actions as may reasonably be necessary, or as OCA may reasonably request, to perfect OCA's ownership of any such Work Product. This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this **Article 13**) unless otherwise so provided elsewhere in this Agreement.

### **13.3 General Rights.**

- (a) **Copyright Legends.** Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.
- (b) **No Implied Licenses.** Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party or its Affiliates.
- (c) **Incorporated Materials.** Without limiting the provisions of **Section 13.1(d)**, should either Party incorporate into Developed Materials any Intellectual Property Rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such Intellectual Property Rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials shall have disclosed this fact to the other Party and obtained the prior approval of the other Party.

## **14. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **14.1 Work Standards.**

Contractor represents, warrants and covenants that (i) the Services shall be rendered with promptness, due care, skill and diligence; (ii) the Services shall be executed in a professional and workmanlike manner, in accordance with the Service Levels and accepted industry standards of first tier providers of services that are the same as or similar to the Services; (iii) Contractor shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence and skill to perform the Services; (iv) Contractor shall provide such individuals with training as to new products and services prior to the implementation of such products and services in OCA's environment; and (v) Contractor shall have the resources, capacity, expertise and ability in terms of Equipment, Materials, know-how and personnel to provide the Services.

## 14.2 Maintenance.

Contractor represents, warrants and covenants that, unless otherwise agreed and to the extent it has operational responsibility under this Agreement, it shall maintain the Equipment and Software so that they operate substantially in accordance with the Service Levels and their Specifications, including (i) maintaining Equipment in good operating condition, subject to normal wear and tear, (ii) undertaking repairs and preventive maintenance on Equipment in accordance with the applicable Equipment manufacturer's recommendations and requirements, and (iii) performing Software maintenance in accordance with the applicable Software supplier's documentation, recommendations and requirements.

## 14.3 Efficiency and Cost Effectiveness.

Contractor represents, warrants and covenants that it shall use commercially reasonable efforts to provide the Services in a cost-effective and efficient manner consistent with the required level of quality and performance set forth in the Service Level Agreement.

## 14.4 Intellectual Property.

- (a) **Ownership and Use.** Contractor represents, warrants and covenants that it is either the owner of or is authorized to use, and possesses sufficient rights to grant the rights and licenses contained in this Agreement to, any and all Materials, Equipment, Systems and other resources or items provided by Contractor. As to any such Materials, Equipment, Systems, resources or items that Contractor does not own, Contractor shall advise OCA as to the ownership and extent of Contractor's rights with regard to such Materials, Equipment, Systems, resources or items to the extent any limitation in such rights would materially impair Contractor's performance of its obligations under this Agreement or the right and licenses granted by Contractor under this Agreement.
- (b) **Performance.** Contractor represents, warrants and covenants that any Contractor Owned Materials consisting of Software and any Equipment provided by Contractor shall comply in all material respects with their applicable documentation and Specifications and shall provide the functions and features and operate in the manner described therein during the Warranty Period.
- (c) **Developed Materials Compliance.** Contractor warrants and covenants that Developed Materials shall, at all times during the Warranty Period, (i) be free from material errors in operation and performance, (ii) comply in all material respects with the applicable documentation and Specifications, and (iii) provide the functions and features and operate in the manner described in the Statement of Work or otherwise agreed by

the Parties. During such Warranty Period, Contractor shall correct any failure to Comply at no additional charge to OCA and shall use commercially reasonable efforts to do so as expeditiously as possible. In the event that Contractor fails or is unable to repair or replace such nonconforming Developed Materials, OCA shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Contractor a copy of the source code and/or object code and/or other applicable documentation to such Developed Materials.

- (d) **Nonconformity of Contractor Owned Software.** In the event that the Contractor Owned Materials consisting of Software do not comply with their applicable documentation and Specifications and/or materially adversely affect the Services provided hereunder, Contractor shall, at its sole cost and expense and without any charge to OCA, expeditiously repair such Software, or replace such Software with conforming Software.

#### **14.5 Non-Infringement.**

Except as otherwise provided in this Agreement, Contractor represents, warrants and covenants that it shall perform its obligations and responsibilities under this Agreement in a manner that does not infringe or misappropriate, or constitute an infringement or misappropriation of, any Intellectual Property Rights; provided, however, that the Contractor shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (i) modifications made by OCA without the approval of the Contractor, (ii) OCA's combination of the Contractor's work product or Materials with items not furnished, specified, recommended, or approved in writing by Contractor or contemplated by this Agreement, (iii) the failure of OCA to use corrections or modifications provided by the Contractor offering equivalent features and functionality (provided Contractor notifies OCA that the corrections or modifications provided address the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), (iv) adherence to detailed specifications provided by OCA that Contractor is required to comply with (provided Contractor notifies OCA of the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), or (v) Third Party Materials, except to the extent that such infringement or misappropriation arises from the failure of Contractor to obtain the necessary licenses or Required Consents or to abide by the limitations of the applicable Third Party Materials licenses.

#### **14.6 General.**

- (a) **Contractor.** Contractor represents, warrants and covenants to OCA that:
- (i) Contractor is a business Entity duly formed, validly existing and in good standing under the Laws of its state of formation;

- (ii) Contractor has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (iii) Contractor has obtained all licenses, authorizations, approvals, consents or permits required to perform its obligations under this Agreement under all applicable federal, state or local Laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services, including under all applicable Laws of the State with the exception of those permits, licenses, and rights that OCA is obligated to provide pursuant to this Agreement;
- (iv) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of Contractor;
- (v) The individual executing this Agreement and the documents made part of this Agreement is authorized to sign such documents on behalf of the Contractor and to bind the Contractor to any contract that may result from this Agreement;
- (vi) When executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of Contractor enforceable in accordance with its terms;
- (vii) The execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which Contractor or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default; and
- (viii) As of the Effective Date there is no pending claim, suit or proceeding or, to the best of Contractor's knowledge, any threatened claim, suit or proceeding, against or affecting Contractor or any of its Affiliates or Subcontractors that could reasonably be expected to adversely affect Contractor's ability to perform and fulfill its obligations under this Agreement including actions pertaining to the proprietary rights described in **Sections 14.4** and **14.5**. Contractor shall notify OCA within ten (10) Business Days of Contractor's knowledge of any such claim, suit or proceeding. Without limiting the terms of **Section 12.1(b)(iii)**, Contractor shall notify OCA, within two (2) days, if process is served on Contractor in connection with this Agreement where such matter may reasonably affect the Services or a Party's rights, including any subpoena for Contractor's records, and shall send a written notice of the service together with a copy of the same to OCA within five (5) Business Days of such service.

- (b) **OCA.** OCA represents, warrants and covenants to Contractor that:
  - (i) OCA has statutory authority to enter into this Agreement and to perform its obligations hereunder;
  - (ii) The execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default; and
  - (iii) When executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of OCA enforceable in accordance with its terms.

#### **14.7 Certifications.**

Contractor, for itself and on behalf of its Subcontractors, certifies that:

- (a) It has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Agreement;
- (b) Under Section 231.006 of the Texas Family Code, the Contractor certifies that it is not ineligible to receive the payments under this Agreement, and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate;
- (c) Neither it, nor anyone acting for it, has violated the antitrust Laws of the United States nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (d) Neither it, nor anyone acting for it, has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Agreement to any competitor or any other person engaged in the same line of business as the Contractor;
- (e) It has not received payment from OCA or any of OCA's employees for participating in the preparation of the Agreement;
- (f) Under Sections 2155.004, 2155.006, 2155.0061, and 2261.053 of the Texas Government Code, it is not ineligible to receive this specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate;

- (g) There are no suits or proceedings pending or, to the best of its knowledge, threatened against or affecting it, which if determined adversely to it will have a material adverse effect on the ability to fulfill its obligations under this Agreement;
- (h) It is not, and its principals are not, suspended or debarred from doing business with the State or the federal government as listed in the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration;
- (i) As of the Effective Date, it is not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (j) It agrees that any payments due under this Agreement shall be applied towards any debt or delinquency that is owed to the State of Texas;
- (k) In accordance with Section 669.003 of the Texas Government Code relating to contracting with an executive head of a state agency, it is not (1) the executive head of OCA, (2) a person who at any time during the four years before the date of this Agreement was the executive head of OCA, or (3) a person who employs a current or former executive head of OCA;
- (l) It does not have any knowledge that any Contractor Personnel or any employee of a Subcontractor performing Services under this Agreement is, or is a relative of, any current or former State employee, within three (3) degrees of consanguinity, and if these facts change during the Term, any failure by Contractor to disclose to OCA the existence of any such employee relationship known to Contractor shall give rise to a right by OCA to terminate this Agreement, in whole or in part, immediately for cause or exercise any other remedy under Applicable Law;
- (m) The provision of Deliverables or Services or other performance under this Agreement shall not constitute an actual or potential conflict of interest and certifies that it shall not create the appearance of impropriety, and, if these facts change during the course of the Agreement, Contractor certifies it shall disclose for itself and on behalf of Subcontractors, the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (n) OCA's payment to Contractor and Contractor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or 556.008, Texas Government Code;

- (o) It will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter;
- (p) It shall comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program;
- (q) It shall comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), and the Immigration Act of 1990 (8 U.S.C. § 1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of IIRIRA, who shall perform any labor or services under this Agreement. Nothing herein is intended to exclude compliance by Contractor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto;
- (r) It is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code; and
- (s) It is compliant with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

During the Term, Contractor shall, for itself and on behalf of its Subcontractors, promptly disclose to OCA all changes that occur to the foregoing certifications, representations and warranties. Contractor covenants to cooperate with OCA in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

#### **14.8 Inducements; OCA Code of Ethics.**

In addition to these provisions applying to Contractor, Contractor shall impose the provisions of this **Section 14.8** in each of its subcontracts and each such representation, warranty and covenant shall be fully applicable with respect to Contractor and each Subcontractor:

- (a) **Reliance.** In executing this Agreement, OCA relies on Contractor’s representations, warranties and covenants regarding the following: (i) Contractor regularly provides the types of Services described in the RFO to other public or private entities; (ii) Contractor has the skills, qualifications, expertise, financial resources and experience necessary to perform the Services described in this Agreement in an efficient, cost-effective manner, with a high degree of quality and responsiveness,

and has performed similar Services for other public or private entities; (iii) Contractor has thoroughly reviewed, analyzed, and understood the RFO, has timely raised all questions or objections to the RFO, and has had the opportunity to review and fully understand the current program, operating environment for the Services, this Agreement and the needs and requirements of OCA and the State during the Term; (iv) Contractor has had the opportunity to review and understand the State's stated objectives in entering into this Agreement and, based on such review and understanding, Contractor has the ability and capacity to perform the Services for the Term in accordance with the terms and conditions of this Agreement; (v) Contractor also has reviewed and accepts the risks associated with the Services as described in the Agreement, including the risk of non-appropriation of funds; (vi) Contractor shall at all times be capable of, and legally authorized to, provide the Services; and (vii) the Charges assessed to OCA shall be true and correct.

- (b) **Inducements.** Contractor represents, warrants and covenants that neither Contractor nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has given or will give commissions, payments, kickbacks, lavish or extensive entertainment or other inducements of more than minimal value to any employee or agent of OCA in connection with this Agreement. Contractor also represents, warrants and covenants that, to the best of its knowledge, neither Contractor nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has given any such payments, gifts, entertainment or other thing of value to any employee or agent of OCA. Contractor also acknowledges that the giving of any such payment, gift, entertainment or other thing of value is strictly in violation of OCA policy on conflicts of interest, and may result in the cancellation of this Agreement and other existing and future contracts between the Parties.
- (c) **OCA Code of Ethics.** Contractor represents, warrants and covenants that, in the performance of the Services and its other contractual obligations hereunder, it shall comply with all applicable provisions of OCA Code of Ethics, as modified from time to time.
- (d) **No Interest.** Contractor represents, warrants and covenants that neither Contractor nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has acquired or will acquire any contractual, financial, business or other interest or advantage, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to OCA under this Agreement or otherwise create an appearance of impropriety with respect to this Agreement; and Contractor shall promptly (but not more than two (2) days from the time in which Contractor first becomes



aware of any such interest) inform OCA of any such interest that may be incompatible with the interests of OCA.

- (e) **No Abuse of Authority for Financial Gain.** Contractor represents, warrants and covenants that neither Contractor nor any of its Affiliates, nor any employee of either, has used or shall use the authority provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit for Contractor, any of its Affiliates, any of their employees or any member of the immediate family of any such employee.
- (f) **No Use of Information for Financial Gain.** Contractor represents, warrants and covenants that neither Contractor nor any of its Affiliates, nor any employee of either, has used or shall use any OCA Confidential Information to obtain financial gain, advantage or benefit for Contractor, any of its Affiliates, any of their employees, nor any member of the immediate family of any such employee.
- (g) **Independent Judgment.** Contractor represents, warrants and covenants that neither Contractor nor any of its Affiliates, nor any employee of either, has accepted or shall accept another OCA contract that would impair the independent judgment of Contractor in the performance of this Agreement.
- (h) **No Influence.** Contractor represents, warrants and covenants that neither Contractor nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has accepted or shall accept anything of value, or an inducement that would provide a financial gain, advantage or benefit, based on an understanding that the actions of Contractor, any such Affiliates or any such employees on behalf of OCA would be influenced thereby; and neither Contractor nor any of its Affiliates shall attempt to influence any OCA employee by the direct or indirect offer of anything of value.
- (i) **No Payment Tied to Award.** Contractor represents, warrants and covenants that neither Contractor nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has paid or agreed to pay any person or Entity, other than bona fide employees working solely for Contractor or such Affiliates or any Subcontractors, any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement.
- (j) **No Collusion.** Contractor represents, warrants and covenants that the prices presented in the Response were arrived at independently, without consultation, communication or agreement with any other proposer for the purpose of restricting competition, the prices quoted were not knowingly disclosed by Contractor to any other proposer and no attempt was made

by Contractor to induce any other person or Entity to submit or not to submit a proposal for the purpose of restricting competition.

#### **14.9 Malicious Code.**

- (a) **Malicious Code.** Contractor represents, warrants and covenants that Contractor shall not insert, and shall take all commercially reasonable actions and precautions to prevent the introduction and proliferation of, any Malicious Code into OCA's environment or any System used to provide the Services. Contractor further represents, warrants and covenants that, with respect to any disabling code that may be part of the Software, Contractor shall not invoke or cause to be invoked such Malicious Code at any time, including upon expiration or any termination of this Agreement, without OCA's prior written consent. Contractor also represents, warrants and covenants that it shall use commercially reasonable efforts to not use Third Party Materials consisting of Software containing Malicious Code without the prior approval of OCA. For purposes of this provision, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed Malicious Code, provided that Contractor shall use commercially reasonable efforts to learn from third parties whether such code is included in third party products and shall notify OCA accordingly and obtain OCA's approval prior to installing such code in any Software, Equipment or System.
- (b) **Recovery Services.** At all times during the Term, Contractor shall maintain written plans and procedures designed to prevent the introduction of Malicious Code into OCA's environment or any System used to provide the Services, which such measures shall include plans to notify and update OCA of such introduction and to mitigate the effects thereof. Contractor shall notify OCA expeditiously of any Malicious Code in any such environment or System of which it becomes aware and mitigate the effects in accordance with such written plans and procedures. Without limiting Contractor's other obligations under this Agreement, in the event Malicious Code is found in Equipment, Software or Systems managed or supported by Contractor or used by Contractor to provide the Services, Contractor shall, except as expressly set forth below, at no additional charge to OCA, eliminate or permanently quarantine such Malicious Code and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, mitigate such losses and restore such data with generally accepted data restoration techniques ("**Malicious Code Recovery Services**"). Contractor shall provide all Malicious Code Recovery Services at no additional Charge. The Parties anticipate that Malicious Code Recovery Services requested by OCA shall be provided by Contractor without adversely affecting Contractor's ability to meet its performance obligations.

**14.10 Compliance with Laws.**

- (a) **Compliance by Contractor.** Contractor represents, warrants and covenants that, with respect to the provision of the Services and the performance of any of Contractor's other legal and contractual obligations hereunder, Contractor and the Services are and shall be in compliance in all material respects with all applicable Laws and shall remain in compliance with such applicable Laws during the Term, including any Privacy Laws. If Contractor becomes aware that it is out of compliance with such applicable Laws, Contractor shall, at its sole cost, promptly (but not more than thirty (30) days from the time in which Contractor first becomes aware of such non-compliance) comply with such applicable Laws.
- (b) **Compliance Data and Reports.** At no additional charge, Contractor shall provide OCA with data reasonably necessary for OCA to comply with all Laws applicable to the use of the Services.
- (c) **Materials, Equipment and Systems Compliance.** Contractor represents, warrants and covenants that the Materials, Equipment and Systems used in connection with providing the Services are in compliance with all applicable Laws and shall remain in compliance with such Laws during the Term.
- (d) **e-Filing Data.** Contractor represents, warrants and covenants that any collection, receipt, access, use, storage, disposal and disclosure of any e-Filing Data by Contractor shall comply with all applicable Laws, including federal and state Privacy Laws, as well as all other applicable regulations and directives.
- (e) **Notice of Laws.** Contractor shall notify OCA of any Laws and changes in Laws applicable to the Services that would reasonably be expected to affect Contractor's obligations under this Agreement or OCA's use of the Services.
- (f) **Implementation of Changes in Laws.** Upon a change in applicable Laws affecting use of the Services, OCA reserves the right, in its sole discretion, to unilaterally amend this Agreement to incorporate any modifications necessary for OCA's compliance. Without modifying the Parties' respective financial obligations under **Exhibit 4**, Contractor shall bear the costs associated with compliance with changes in Laws unless the change(s) required for compliance meets the definition of New Services, in which case it shall be treated as such and subject to payment of fees for such New Services.
- (g) **Termination.** In the event that any change(s) in Laws results in an increase of ten percent (10%) or more in the estimated average Quarterly

Charges, then OCA may, within one hundred eighty (180) days of such aggregate increase being attained and upon at least ninety (90) days prior notice to Contractor, terminate this Agreement in its entirety or the impacted Services as of the termination date specified in the notice.

- (h) **Responsibility.** Contractor shall be responsible for any Losses imposed on Contractor or OCA resulting from any failure of Contractor or any third party engaged by Contractor to comply with applicable Laws or respond in a timely manner to changes in such Laws.

#### **14.11 Equal Opportunity Compliance.**

Contractor represents, warrants and covenants that it shall abide by all applicable Laws pertaining to equal employment opportunity, including state and federal Laws. In accordance with such Laws, Contractor agrees that no individual in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, or disability, be excluded from employment with or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed by Contractor under this Agreement. If Contractor is found to be in non-compliance with these requirements, Contractor agrees to take appropriate steps to correct such noncompliance. Upon request, Contractor shall furnish to OCA information regarding Contractor's nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **14.12 Information Furnished to OCA.**

Contractor represents that all written information made a part of this Agreement is current, complete, true and accurate. This Agreement contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading. Contractor hereby agrees to provide OCA with notice within two (2) days in the event it discovers that any information that has been provided to OCA is or becomes untrue and incorrect. Such notice shall identify the information incorrectly provided and shall set forth the true and correct information.

#### **14.13 Previous Contracts.**

Other than as specifically disclosed by Contractor in writing, Contractor represents that neither it, nor any of its Affiliates or Subcontractors, is in default or breach of any other contract or agreement related to information systems facilities, equipment or services that it or they may have with OCA, the State or any other State related Entity. Contractor further represents that neither it, nor any of its Affiliates or Subcontractors, has been a party to any contract for information system facilities, equipment or services with OCA, the State or any

other State-related Entity that was finally terminated within the previous five (5) years for the reason that Contractor or such Affiliate or Subcontractor failed to perform or otherwise breached an obligation of such contract. Contractor hereby certifies that it has provided disclosure of all pending, resolved, or completed litigation, mediation, arbitration or other alternate dispute resolution procedure involving Contractor, its Affiliates or its Subcontractors that could reasonably be expected to materially adversely affect Contractor's ability to perform and fulfill its obligations under this Agreement.

#### **14.14 Completeness of Due Diligence Activities.**

Contractor acknowledges that it has been provided with sufficient access to OCA information and personnel, and has had sufficient time in which to conduct and perform a thorough due diligence of OCA's operations and business requirements and assets currently used by OCA in providing the Services. Accordingly, Contractor shall not seek any adjustment in the Charges based on any incorrect assumptions made by Contractor in arriving at the Charges.

#### **14.15 Interoperability.**

Contractor represents, warrants and covenants that the Software, Equipment and Systems that are owned, developed, implemented or used by Contractor in connection with providing the Services shall be interoperable with the Software, Equipment and systems used by OCA to the extent necessary for OCA to receive the full benefit of the Services.

#### **14.16 Prohibition on Contracts with Companies Boycotting Israel.**

As required by Texas Government Code Section 2270.002, by executing this Agreement, Contractor represents and warrants that it does not, and will not during the Term, boycott Israel. Contractor further represents and warrants that no Subcontractor of the Contractor boycotts Israel or will boycott Israel during the Term. Contractor agrees to take all necessary steps to ensure this representation and warranty remains true during the Term.

#### **14.17 Financial Condition.**

During the Term, Contractor shall promptly provide, but no later than one hundred twenty (120) days after the end of the Contractor's fiscal year, its year-end financial statements as of the end of such fiscal year, all in reasonable detail, and an audit reported by a nationally recognized independent certified public accountant (without a "going concern" or like qualification or exception as to the scope of such audit) to the effect that the financial statements present fairly the financial condition and results of operation of the Contractor.

## 15. INSURANCE AND RISK OF LOSS

Contractor shall at all times during the Term of this Agreement carry and maintain at its sole cost and expense the following insurance coverage in each case issued by an insurer having an A. M. Best Company financial strength rating of A or greater and a financial size category ranking of class IX or higher, licensed in the state of Texas, and authorized to provide the corresponding coverage: (a) Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract and endorsed with a waiver of subrogation against the State, OCA, counties, and courts, and their respective officers and employees, for bodily injury (including death), property damage or any other loss; (b) Commercial General Liability Insurance in an amount not less than \$1,000,000 minimum per each occurrence and \$2,000,000 in the aggregate; (c) Professional Liability (Errors and Omissions Liability) with limits of at least \$2,000,000 each occurrence limit; (d) Cybersecurity Insurance in an amount not less than \$3,000,000 minimum per each occurrence and \$5,000,000 in the aggregate, protecting against the loss arising out of a Security Incident, including (i) network security and privacy liability, (ii) notification and other breach response costs, (iii) fines and penalties, and (iv) cyber extortion; and (e) Umbrella Insurance in an amount of no less than \$10,000,000. Contractor shall provide at least thirty (30) days written notice prior to any cancellation of policies listed under this section. Contractor shall maintain the above insurance coverage during the Term of this Agreement, and shall include OCA and its directors, officers, and employees as additional insureds, include a waiver of subrogation in favor of OCA and its directors, officers, and employees, and be primary and non-contributory with respect to any insurance or self-insurance that is maintained by OCA and shall provide OCA with ~~an executed copy of~~ [certificates evidencing](#) the policies immediately upon request.

## 16. INDEMNITIES

### 16.1 General Indemnity by Contractor.

**CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE STATE, OCA AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES (COLLECTIVELY, "OCA INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, ACTION, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT AND ANY STATEMENT OF WORK OR PURCHASE ORDERS ISSUED UNDER THIS AGREEMENT. CONTRACTOR AND OCA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEY'S FEES. THE**

DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE OAG WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE OCA AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO ATTORNEY'S FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF OCA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF OCA IS REQUIRED BY LAW TO SELECT SEPARATE COUNSEL, OCA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF OCA'S COUNSEL.

**16.2 Intellectual Property Indemnity.**

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OCA AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS AGREEMENT; (2) ANY DELIVERABLE WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) OCA'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO OCA BY CONTRACTOR OR OTHERWISE TO WHICH OCA HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR AND OCA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE OAG WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE OCA AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO ATTORNEY'S FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF OCA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF OCA IS REQUIRED BY LAW TO SELECT SEPARATE COUNSEL, OCA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF OCA'S COUNSEL.

**16.3 No Double Recovery.**

No provision of this Agreement shall be construed to provide indemnity for any amounts for which OCA has been fully compensated under any other agreement or action at law or equity; provided, however, that OCA shall not be required to exhaust any or all remedies available under other agreements or at law or equity before recovering indemnification amounts pursuant to **Section 16.1**.

#### **16.4 Comparative Fault.**

THE PARTIES AGREE THAT THE INDEMNITIES ABOVE SHALL CONTINUE IN EFFECT EVEN IN THE CASE WHERE A PORTION OF THE DAMAGE IS CAUSED BY THE ACTS OR OMISSIONS (INCLUDING NEGLIGENCE) OF OCA. HOWEVER, THE PARTIES FURTHER AGREE THAT CONTRACTOR IN NO WAY WAIVES ANY DEFENSE OTHERWISE AVAILABLE TO IT IN ANY SUCH EVENT, INCLUDING THE RIGHT TO ASSERT COMPARATIVE FAULT OF OCA.

#### **16.5 Infringement and Mitigation.**

In the event that (i) Contractor receives or otherwise learns of any threat, warning, or notice alleging that all, or any component or feature of the Services violates a Intellectual Property Right, or (ii) OCA's continued use of Deliverables, Work Product, Developed Materials, Contractor Owned Material, or Services is enjoined; then, in each case, Contractor shall, in addition to defending, indemnifying and holding harmless OCA as provided in **Section 16.1** and to the other rights OCA may have under this Agreement, promptly and at its own option, cost and expense and in such a manner as to minimize the disturbance to OCA's operations and activities, do one of the following:

- (a) **Obtain Rights.** Obtain for OCA the right to continue using and receiving the benefits of such Deliverables, Work Product, Developed Materials, Contractor Owned Material, or Services.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing or enjoined (provided that such modification does not degrade the performance or quality of the Services or adversely affect OCA's intended use as contemplated by this Agreement).
- (c) **Replacement.** Replace such item(s) with a non-infringing or non-enjoined, as applicable, functional and qualitative equivalent acceptable to OCA.
- (d) **Discontinued Use.** If, despite Contractor's commercially reasonable efforts to effect the alternatives set forth in **Sections 16.5(a), (b), and (c)** above, the Parties determine that none of such alternatives are feasible, Contractor may discontinue its use of such infringing, potentially infringing or enjoined Deliverables, Work Product, Developed Materials, Contractor Owned Material, or Services; provided, however, that neither such right nor such discontinuation shall limit or expand OCA's rights or Contractor's



obligations under this Agreement; nor shall such right or such discontinuation excuse any breach by Contractor of its obligation to provide the Services in a non-infringing and non-enjoined manner.

#### **16.6 Indemnification Procedures.**

With respect to claims which are subject to indemnification under this Agreement, the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by any person or Entity entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim in respect of which the OCA Indemnitee may seek indemnification hereunder, the OCA Indemnitee shall notify Contractor of such claim. No delay or failure to so notify Contractor shall relieve Contractor of its obligations under this Agreement except to the extent that Contractor has suffered actual prejudice by such delay or failure. Within fifteen (15) Business Days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) Business Days before the date on which any response to a complaint or summons is due, Contractor may notify the indemnitee that Contractor elects to assume control of the defense and investigation of that claim (a “**Notice of Election**”).
- (b) **Procedure Following Notice of Election.** If Contractor delivers a Notice of Election within the required notice period, Contractor shall immediately take control of the defense and investigation of such claim and shall employ counsel reasonably acceptable to OCA to handle and defend the same, at Contractor’s sole cost and expense; provided, however, THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH OAG WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OAG. CONTRACTOR AND OCA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- (c) **Procedure Where No Notice of Election Is Delivered.** If Contractor does not deliver a Notice of Election relating to any claim within the required notice period, the OCA Indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. Contractor shall promptly reimburse the OCA Indemnitee for all such reasonable costs and expenses incurred by the OCA Indemnitee, including reasonable attorneys’ fees.

### 16.7 Subrogation.

In the event that Contractor shall be obligated to indemnify an indemnitee pursuant to any provision of this Agreement, Contractor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

## 17. LIABILITY

### 17.1 General Intent.

Subject to the specific provisions and limitations of this **Article 17**, and to the extent allowed by applicable Laws, it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

### 17.2 Force Majeure.

- (a) **General.** Subject to **Section 17.2(c)**, no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, epidemics, pandemics, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of prudent planning, alternate sources, incident response plans, workaround plans or other means ("**Force Majeure Event**"). A strike, lockout or labor dispute involving Contractor Personnel shall not excuse Contractor from its obligations hereunder. Notwithstanding anything to the contrary in this **Section 17.2**, Contractor shall remain obligated to perform its obligations contained in **Section 7.3(a)**.
- (b) **Substitute Services; Termination.** If any Force Majeure Event has substantially prevented, hindered or delayed or is reasonably expected to substantially prevent, hinder or delay the performance by Contractor of Services necessary for the performance of critical OCA functions for longer than the recovery period specified in the applicable Disaster Recovery Plan or, if there is no such specified recovery period, twenty-four (24) hours, Contractor shall, unless and until otherwise directed by OCA, use commercially reasonable efforts to procure such Services from an alternate source at Contractor's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Contractor for the Services with respect to the period of non-performance. In addition, if any Force Majeure Event substantially prevents, hinders or delays the performance by Contractor of Services necessary for the performance of critical OCA functions for more than five (5) Business

Days, then OCA may, upon notice to Contractor, terminate this Agreement in its entirety or any portion of the Services so affected (including portions that are no longer required if the impacted portion is terminated) as of the termination date specified in the notice.

- (c) **Disaster Recovery.** Upon the occurrence of a Force Majeure Event that prohibits the ability of OCA to provide critical business functions for some predetermined period of time, or any other event that is designated as a “Disaster” under the applicable Disaster Recovery Plan, Contractor shall promptly implement, as appropriate, the applicable business continuity and Disaster Recovery Plan and provide business continuity and Disaster Recovery Services, as described in the Disaster Recovery Plan.
- (d) **Payment Obligation.** If Contractor fails to provide Services in accordance with this Agreement due to the occurrence of a Force Majeure Event, all amounts payable to Contractor hereunder shall be equitably adjusted downward so that OCA is not required to pay any amounts for Services that OCA is not receiving, whether from Contractor or from an alternate source at Contractor’s expense pursuant to **Section 17.2(b)**. Contractor shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Contractor’s ability to perform.

**17.3 Limitation of Liability.**

- (a) **Exclusions from Limitations.** EXCEPT AS PROVIDED IN THIS **SECTION 17.3**, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, COLLATERAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) **Liability Cap.** Except as limited by applicable Laws (including those provisions applying to governmental agencies under the constitution of the State), the total aggregate liability of either Party, for all claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, shall not exceed the greater of (i) Charges paid and payable by OCA to Contractor during the twenty-four (24) months preceding the date upon which the cause of action accrues hereunder or (ii) \$20,000,000. The foregoing shall not include any claims made to the applicable insurance policies set forth herein.
- (c) **Items Not Considered Damages.** The following shall not be considered damages subject to, and shall not be counted toward the liability exclusion or cap specified in, **Sections 17.3(a)** or **17.3(b)**:

- (i) Service Level Reimbursements or Deliverable Fees assessed against Contractor.
  - (ii) Amounts withheld by OCA in accordance with this Agreement due to incorrect Charges or Services not provided.
  - (iii) Amounts paid by OCA but subsequently recovered from Contractor due to incorrect Charges or Services not provided.
  - (iv) Invoiced Charges and other amounts that are due and owing to Contractor for Services under this Agreement.
- (d) **Acknowledged Direct Damages.** For the avoidance of doubt, the following shall be considered direct damages and neither Party shall assert that the following are indirect, incidental, collateral, consequential or special damages or lost profits to the extent they result directly from the breaching Party's failure to perform in accordance with this Agreement:
- (i) Costs and expenses of restoring, reloading, or notifying of any lost, stolen or damaged e-Filing Data.
  - (ii) Costs and expenses of implementing a work around in respect of a failure to provide the Services or any part thereof.
  - (iii) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source in excess of the Charges that would have been paid Contractor for such Services.
  - (iv) Fines, penalties, sanctions, interest or other monetary remedies incurred as a result of a failure to comply with applicable Laws.
  - (v) Service Level Reimbursements or Deliverable Fees assessed against Contractor.
  - (vi) Lost discounts, late fees and/or interest charges incurred by OCA resulting from Contractor's breach of its obligations.

The absence of direct damages listed in this **Section 17.3(d)** shall not be construed or interpreted as an agreement to exclude it as a direct damage under this Agreement.

- (e) **Waiver of Liability Cap.** If, at any time, the total aggregate liability of Contractor for claims asserted by OCA under or in connection with this Agreement exceeds sixty percent (60%) of the applicable liability cap specified in **Section 17.3(b)** and, upon receipt of the request of OCA, Contractor refuses to waive such cap and/or increase the available cap to an amount at least equal to the original liability cap, then OCA may, upon

notice, terminate this Agreement in its entirety as of the termination date specified in the notice.

## 18. DISPUTE RESOLUTION

### 18.1 Informal Dispute Resolution.

Subject to compliance with Chapter 2260, Texas Government Code, prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in **Section 18.1(e)**, the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that, following receipt of written notice by any of the Parties, the OCA Information Resources Manager and/or the OCA Project Manager, the Contractor Program Manager and/or the Contractor Project Manager, as applicable, shall attempt in good faith to resolve all disputes (other than those described in **Section 18.1(e)** or **19.7**). Upon the earlier to occur of (i) the OCA Information Resources Manager or the Contractor Program Manager concluding in good faith that amicable resolution through continued negotiation of a dispute does not appear likely and (ii) the fifteenth (15th) day following the date of the notice of dispute, either Party may refer the dispute for resolution to the senior executives specified in **Section 18.1(b)** upon notice to the other Party.
- (b) **Escalation.** Within five (5) Business Days of a notice under **Section 18.1(a)** referring a dispute for resolution to senior executives, the OCA Information Resources Manager and/or the OCA Project Manager, the Contractor Program Manager and/or the Contractor Project Manager, as applicable, shall each prepare and provide to the designated senior executives of Contractor and OCA, respectively, summaries of the non-privileged relevant information and background of the dispute, along with any appropriate non-privileged supporting documentation, for their review. The designated senior executives of each Party shall confer as often as they deem reasonably necessary in order to gather and furnish to the other all non-privileged information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The designated senior executives of each Party shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions shall be left to the discretion of the designated senior executives of OCA, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) **Provision of Information.** During the course of negotiations under **Section 18.1(a)** or **(b)** above, all reasonable requests made by one Party to another for non-privileged information reasonably related to the dispute

shall be honored in order that each of the Parties may be fully advised of the other's position. All negotiations shall be strictly confidential and used solely for the purposes of settlement or resolution. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent arbitration or litigation; provided, however, that the underlying facts supporting such materials may be subject to discovery.

- (d) **Prerequisite to Formal Proceedings.** Upon the earlier to occur of (i) the designated senior executives under **Section 18.1(b)** concluding in good faith that amicable resolution through continued negotiation of a dispute does not appear likely and (ii) the fifteenth (15<sup>th</sup>) day following the date of the notice provided under **Section 18.1(a)** referring the dispute to senior executives, then the Parties shall be entitled to discontinue negotiations and to seek to resolve the dispute through the dispute resolution process provided for in Chapter 2260, Texas Government Code.
- (e) **Equitable Remedies.** Notwithstanding the provisions and time periods specified in this **Section 18.1**, the Parties at any time may use formal proceedings pursuant to the process set forth in Chapter 2260, Texas Government Code, in order to (i) avoid the expiration of any applicable limitations period, (ii) preserve a superior position with respect to other creditors, (iii) address a claim arising out of the breach of a Party's obligations under **Article 12**, or (iv) pursue claims for injunctive relief with respect to a Party's obligations to the extent resulting in irreparable injury.

## **18.2 Jurisdiction.**

Except as otherwise expressly provided in this **Article 18** or unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to OCA, each Party irrevocably agrees that any legal action, suit or proceeding brought by such Party in any way arising out of this Agreement must be brought solely and exclusively in the United States District Court for the Western District of Texas, Austin Division, or in the state courts of the State of Texas located in Travis County, Texas, and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts *in personam*, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party; provided, however, that this Section shall not prevent a Party against whom any legal action, suit or proceeding is brought by the other Party in the state courts of the State of Texas from seeking to remove such legal action, suit or proceeding, pursuant to applicable federal Law, to the United States District Court for the Western District of Texas, Austin Division, and in the event an action is so removed each Party irrevocably accepts and submits to the jurisdiction of the aforesaid district court.

### 18.3 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided that this provision shall not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party's exercise of any right it may have to terminate this Agreement as expressly provided herein. For purposes of clarification, e-Filing Data may not be withheld by Contractor pending the resolution of any dispute.
- (b) **Non-Interruption of Services.** Contractor acknowledges and agrees that any interruption to the Services may cause irreparable harm to OCA and may adversely impact the ability of the State to carry out vital public safety and other governmental functions (including homeland security matters), in which case an adequate remedy at Law would not be available. Except to the extent expressly permitted under Chapter 2251, Texas Government Code, Contractor expressly acknowledges and agrees that at all times, including pending resolution of any dispute or controversy, it shall continue to perform under this Agreement and not directly or indirectly engage in any act or omission that may have a detrimental effect on provision of the Services to OCA under this Agreement.

### 18.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. Nothing in this Agreement shall be construed to waive the State's sovereign immunity.

## 19. TERMINATION

### 19.1 Termination for Cause.

- (a) **By OCA.** OCA may, upon written notice to Contractor, terminate this Agreement or the Statement of Work, in whole or in part, at any time, effective upon the termination date set forth in such termination notice, if Contractor:
- (i) commits a material breach of its obligations with respect to Deliverables or Services under the Statement of Work(s) and such breach is not cured, or is not capable of being cured, within the applicable timeframe for cure provided for herein or if not provided, within thirty (30) days after receipt of written notice of such breach from OCA;
  - (ii) signs this Agreement with a false statement or commits a material breach of any provision of this Agreement, including the violation of

any of the representations, warranties, guarantees, certifications, affirmations, or covenants contained herein;

- (iii) commits numerous breaches of its duties or obligations which collectively constitute a material breach of this Agreement and Contractor fails to do both of the following: (A) cure each such breach within thirty (30) days of initial notice thereof; and (B) develop within ten (10) Business Days following initial written notice of breach from OCA a complete plan reasonably acceptable to OCA for curing the breach and correcting the deficiencies causing such breaches on a permanent basis; provided, however, that this **Section 19.1(a)(iii)** shall in no manner limit (A) OCA's right of termination pursuant to any other provision of **Section 19.1(a)**, or (B) Contractor's obligation to cure individual nonmaterial breaches of this Agreement;
  - (iv) commits a material breach of **Section 14.8** of this Agreement;
  - (v) (1) files for bankruptcy, (2) becomes or is declared insolvent, or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, or insolvency, (3) passes a resolution for its voluntary liquidation, (4) has a receiver or manager appointed over all or substantially all of its assets, (5) makes an assignment for the benefit of its creditors, or (6) enters into an agreement or arrangement for the composition, extension, or readjustment of substantially all of its obligations or any class of such obligations;
  - (vi) fails to communicate with OCA as required by this Agreement; or
  - (vii) breaches its obligations under this Agreement with respect to e-Filing Data or OCA Confidential Information.
- (b) **By Contractor.** In the event that OCA fails to pay Contractor amounts due and owing in accordance with Chapter 2251, Texas Government Code that, in the aggregate, exceed three (3) Quarterly Charges by the specified due date and fails to cure such default within thirty (30) days of notice from Contractor of its intention to terminate for failure to make such payment, Contractor may, upon further notice to OCA specifying Contractor's intention to terminate this Agreement in accordance with this provision following an additional thirty (30) days, terminate this Agreement in its entirety as of the termination date specified in the further notice (provided that OCA has not cured the default prior to the effective date of termination). Contractor acknowledges and agrees that this **Section 19.1(b)** describes Contractor's sole right to terminate this Agreement and Contractor hereby waives any other rights it may have to terminate this Agreement.



### **19.2 Termination for Convenience.**

OCA may (without incurring any liabilities) terminate this Agreement or the Statement of Work, for any reason or no reason, in whole or in part, (a) if it is in the best interest of the State of Texas to do so, or (b) upon at least ninety (90) days' prior notice to Contractor, effective as of the termination date specified in such notice; provided, however, if OCA elects to terminate this Agreement or the Statement of Work pursuant to this **Section 19.2** within six (6) months following the Effective Date, OCA shall pay to Contractor a Termination Charge.

### **19.3 Termination Upon Contractor Change of Control.**

In the event there is a change in control of Contractor (or that portion of Contractor providing all or any portion of the Services under this Agreement), or Contractor (or that portion of Contractor providing all or any portion of the Services under this Agreement) is merged with or into another Entity, then Contractor shall immediately provide OCA with written notice of such change in control. At any time within twelve (12) months following receipt of such written notice, OCA may terminate this Agreement, in whole or in part, upon at least ten (10) Business Days' prior notice to Contractor, effective as of the termination date specified in such notice. As used in this Agreement, "change in control" means (a) a sale of substantially all of the assets of Contractor, (b) a change in a majority of the management team, such as the board of directors, or (c) a direct or indirect change in beneficial ownership of 25% or more of the equity interest in Contractor.

### **19.4 OCA Rights Upon Contractor's Bankruptcy.**

- (a) **General Rights.** In the event of Contractor's bankruptcy or of the filing of any petition under bankruptcy Laws affecting the rights of Contractor which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, OCA shall have the immediate right to retain and take possession for safekeeping all e-Filing Data, OCA Confidential Information, OCA licensed Third Party Materials, OCA owned Materials, OCA owned Developed Materials and all other Materials, Equipment or Systems to which OCA is or would be entitled during the Term or upon the expiration or any termination of this Agreement. Contractor shall cooperate fully with OCA and assist OCA in identifying and taking possession of the items listed in the preceding sentence. OCA shall have the right to hold such e-Filing Data, Confidential Information, Materials, Equipment and Systems until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to OCA that they shall be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Contractor and OCA agree that without this material provision, OCA would not have entered into this

Agreement or provided any right to the possession or use of e-Filing Data, OCA Confidential Information or OCA Materials, Equipment and Systems covered by this Agreement.

- (b) **OCA Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary and to the maximum extent permitted by applicable Laws, in the event that Contractor becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the “**Bankruptcy Code**”)) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a “**Bankruptcy Rejection**”), then (i) any and all of the licensee and sublicensee rights of OCA arising under or otherwise set forth in this Agreement, including the rights of OCA referred to in **Section 13.1(f)**, shall be deemed fully retained by and vested in OCA as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Contractor is the debtor; (ii) OCA shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365(n) of the Bankruptcy Code; and (iii) to the extent any rights of OCA which arise after the expiration or any termination of this Agreement are determined by a bankruptcy court not to be “intellectual property rights” for purposes of Section 365(n) of the Bankruptcy Code, all of such rights shall remain vested in and fully retained by OCA after any Bankruptcy Rejection as though this Agreement were terminated or expired. OCA shall under no circumstances be required to terminate this Agreement, in whole or in part, after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including any of the rights of OCA set forth in **Section 13.1(f)**, unless and to the extent required by applicable Laws.

#### **19.5 Termination for Adverse Change in Contractor’s Financial Condition.**

If (i) Contractor receives a “going concern” explanation or qualification from its external auditor, (ii) Moody’s Investors Service lowers Contractor’s long term credit rating to Ba2 or lower, or (iii) Standard & Poor’s lowers Contractor’s long term credit rating to BB or lower and, in each case, in the reasonable opinion of OCA such change in the financial condition of Contractor may impair or otherwise compromise the ability of Contractor to perform its obligations under this Agreement, then OCA may, in its sole discretion, terminate this Agreement by giving Contractor at least thirty (30) days’ prior notice. With respect to the events described in (ii) or (iii) above, prior to exercising its right to terminate, OCA shall meet with Contractor within ten (10) Business Days following notification (or awareness) of such event and permit Contractor to submit to OCA a plan that comprehensively addresses OCA’s concerns related to Contractor’s ability to perform its obligations under this Agreement. If OCA, in its sole discretion, determines that the plan does not adequately address its concerns, OCA shall have the right to terminate this Agreement as described above.

**19.6 Step-In Rights.**

Without limiting OCA's rights under **Section 19.1**, if Contractor commits a material breach that has a significant impact on the ability of OCA to conduct a critical aspect of its operations, and Contractor is unable to cure such breach within five (5) Business Days, OCA may, in addition to its other remedies at Law and in equity, obtain from a third party or provide for itself comparable services that shall allow OCA to conduct its operations until Contractor has cured the breach or this Agreement is terminated. Contractor shall reimburse OCA for all reasonable costs and expenses of obtaining or providing such services during such period of non-performance. The express inclusion of this remedy in this **Section 19.6** does not limit OCA's right to use a similar remedy for other breaches by Contractor of this Agreement or limit OCA from any other remedy afforded to it under this Agreement.

**19.7 Absolute Right.**

If Contractor becomes (i) listed on the prohibited vendors list authorized by Executive Order Number 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control, or (ii) suspended or debarred from doing business with the State or federal government as listed in the State of Texas Debarred Vendor List or the Excluded Parties List System maintained by the General Services Administration, then OCA may, upon notice to Contractor, terminate this Agreement, in whole or, to the extent possible under applicable Law, in part, as of the termination date specified in the notice.

**19.8 Lack of Sufficient Funds or Statutory Authority.**

If funding for OCA's obligations under this Agreement is reduced by Law or funds sufficient to pay Contractor for the Services provided hereunder are not appropriated by applicable governing bodies or otherwise made available by Law, then OCA may, upon at least thirty (30) days' prior notice to Contractor, decrease the amount and types of the Services in such manner and for such periods of time as OCA may elect. In such event, (i) the Charges shall be adjusted downward in proportion to the portion of the Services that Contractor shall not be providing, and (ii) the Parties shall negotiate equitable adjustments to the Service Levels if and to the extent that any resulting reductions in scope or volume of Services directly affects Contractor's ability to meet the Service Levels, provided that Contractor notifies OCA the extent to which it shall not be able to meet such Service Levels and uses commercially reasonable efforts to meet the Service Levels notwithstanding such reductions. OCA shall promptly notify Contractor if OCA believes that the necessary funding or authorizations shall not be obtained. If partial funding sufficient only for a portion of the Services shall be made available, the Parties may agree to perform their respective obligations relative to such Services, and this Agreement shall be amended

accordingly. OCA is a State agency whose authority is subject to the actions of the State legislature. If funds sufficient to pay OCA's obligations under this Agreement are not appropriated by applicable governmental authorities or if OCA's statutory authority to enter into this Agreement is repealed by the State legislature or ruled unconstitutional by a court of competent jurisdiction, then OCA may, upon notice to Contractor, terminate this Agreement, in whole or in part, as of the termination date specified in the notice without penalty or charges to OCA. If OCA and/or the subject matter of this Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (a) render the continued provision of the Services impossible or unnecessary, (b) render this Agreement invalid, illegal or otherwise unenforceable, (c) substantially decrease the amount and types of the Services or (d) terminate the appropriations for this Agreement, then OCA may, upon notice to Contractor, terminate this Agreement, in whole or in part, as of the termination date specified in the notice, without penalty to OCA.

### **19.9 General Termination Rights.**

- (a) **Partial Terminations.** If OCA chooses to terminate only a portion of this Agreement, the Charges shall be equitably adjusted downward in proportion to the portion of the Services that Contractor shall not be providing.
- (b) **Other Terminations.** In addition to the provisions of this Article, OCA may terminate this Agreement as expressly provided in this Agreement or under Law.

### **19.10 Effect of Termination.**

Following termination of this Agreement, in whole or in part, upon OCA's request, Contractor shall provide Termination Assistance Services directly to OCA, its successors or assigns and any of their designee(s) in accordance with **Section 4.3**. Except as specified in **Section 19.2**, termination of this Agreement shall not result in the payment of a Termination Charge or any other penalties, fees or charges, nor shall OCA incur any liabilities in connection with termination of the Agreement.

## **20. GENERAL**

### **20.1 No Waiver of Sovereign Immunity.**

The Parties expressly agree that no provision of this Agreement shall be construed as or constitute a waiver by OCA or the State of any immunities from suit or from liability that OCA or the State have by operation of law (whether constitutional or statutory, whether State or federal).

## 20.2 RFO Errors and/or Omissions.

Contractor shall not take advantage of or exploit any errors and/or omissions in the RFO or the resulting Agreement. Contractor must promptly (but not more than two (2) days from the time in which Contractor first becomes aware of any such situation) notify OCA of any such errors and/or omissions that are discovered and reasonably agree to modifications consistent with the intent of the Parties as of the Effective Date of this Agreement.

## 20.3 Abandonment or Default.

If Contractor abandons the Agreement, OCA reserves the right to cancel the Agreement without notice and either re-solicit and re-award the Agreement or take such further action or no action in the best interest of the State, and Contractor shall not be considered in the re-solicitation and may not be considered in future solicitations for the same type of Services, unless the specifications or scope of work significantly changes.

## 20.4 Place of Performance.

Unless otherwise agreed to in writing, all Services performed by Contractor, its Subcontractors and agents must be performed in the United States.

## 20.5 Buy Texas.

In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of the Services, it shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside this State.

## 20.6 Binding Nature and Assignment.

- (a) **Binding Nature.** This Agreement shall be binding on the Parties and their respective successors, permitted assigns, transferees, and delegates. Except in the instance of an assignment or transfer by OCA of all or any portion of this Agreement pursuant to **Section 20.6(b)**, the assigning Party shall remain liable for the performance of any assigned or transferred obligations hereunder.
- (b) **Assignment.** [\[Contractor requests the right to assign the agreement to a successor in interest provided that the successor assumes all obligations and is able to meet the obligations of this agreement.\]](#) Contractor may not assign all or any portion of its rights under or interests in this Agreement (including by operation of law) or delegate, in whole or in part, any of its duties without the prior written consent of OCA, which consent may be withheld in OCA's sole discretion. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment

by the assignee, in a form acceptable to OCA in its sole discretion. Except where otherwise specifically agreed in writing by OCA, OCA's acceptance of any assignment or delegation does not release Contractor from its obligations pursuant to this Agreement. OCA may, without the approval of Contractor, assign or transfer its rights or obligations under this Agreement, in whole or in part, to any other State agency as directed by the State legislature or as otherwise required under Law. The consent of a Party to any assignment of this Agreement shall not constitute such Party's consent to further assignment. Each party to whom an assignment or transfer is made must assume all or any part of Contractor's or OCA's interests in this Agreement, the Services, and any documents executed with respect to this Agreement, including its obligation for all or any portion of the payments due hereunder.

- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this Section shall be null and void *ab initio*; provided, however, that if Contractor assigns this Agreement in contravention of this Section by operation of Law, such assignment shall be voidable at the option of OCA.

#### **20.7 Entire Agreement; Amendment.**

This Agreement, including any Exhibits and Attachments referred to herein or attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes the RFO and all prior agreements, representations, warranties, promises, covenants, commitments, or undertakings, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver or discharge is sought to be enforced.

#### **20.8 Notices.**

- (a) **Primary Notices.** Any notice, notification, request, demand or determination provided by a Party under this Agreement shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking delivery or (iii) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise notified, the foregoing notices shall be delivered as follows:

In the case of OCA:

Office of Court Administration  
205 W. 14th St., Suite 600  
Austin, TX 78701  
Attention: Casey Kennedy, Director of Information Services

Office of Court Administration  
205 W. 14th St., Suite 600  
Austin, TX 78701  
Attention: Mena Ramon, General Counsel

In the case of Contractor:

[\_\_\_\_\_]
[\_\_\_\_\_]

With a copy to:

[\_\_\_\_\_]
[\_\_\_\_\_]

ATTN: [\_\_\_\_\_] , General Counsel

- (b) **Written Complaints.** In addition to other remedies contained in this Agreement, Contractor may direct its written complaints regarding OCA to the following office:

Office of Court Administration  
205 W. 14th St., Suite 600  
Austin, TX 78701  
Attention: David Slayton, Administrative Director

With a copy to the following which does not constitute notice:

Office of Court Administration  
205 W. 14th St., Suite 600  
Austin, TX 78701  
Attention: Casey Kennedy, Director of Information Services

Office of Court Administration  
205 W. 14th St., Suite 600  
Austin, TX 78701  
Attention: Mena Ramon, General Counsel

Jackson Walker  
100 Congress Avenue, Suite 1100  
Austin, TX 78701  
Attention: Jonathan Lass, Outside Counsel

- (c) **Notice of Change.** A Party may from time to time change its address or designee for notification purposes by giving the other Party prior notice of the new address or designee and the date upon which it shall become effective.

**20.9 Counterparts.**

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

**20.10 Headings.**

The Article and Section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

**20.11 Relationship of Parties.**

Contractor, in furnishing Services hereunder, is acting as an independent contractor, and Contractor has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Contractor under this Agreement. The relationship of the Parties under this Agreement shall not constitute a partnership or joint venture for any purpose. Contractor is not an agent of OCA and has no right, power or authority, expressly or impliedly, to represent or bind OCA as to any matters.

**20.12 Severability.**

If any provision of this Agreement (or any portion thereof) or the application of any such provision (or portion thereof) to any person, Entity or circumstance is held to be invalid, illegal or otherwise unenforceable in any respect by a final judgment, order of the State Office of Administrative Hearings or a court of competent jurisdiction, such provision shall be deemed to be void and unenforceable. Notwithstanding the preceding sentence, the remaining provisions of this Agreement, if capable of substantial performance, shall remain in full force and effect. By entering into this Agreement, OCA makes no representations or warranties regarding the enforceability of the terms of this Agreement and OCA does not waive any applicable Law that conflicts with the terms of this Agreement.

**20.13 Consents and Approval.**

Except where expressly provided as being in the sole discretion of a Party, where any agreement, approval, acceptance, consent, confirmation, determination, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this



Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

#### **20.14 Waiver of Default; Cumulative Remedies.**

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** Except as expressly set forth herein, all remedies provided for in this Agreement shall be cumulative ~~and in addition to and not in lieu of any other remedies available to either Party at Law, in equity or otherwise.~~ The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party ~~at Law, in equity, by contract or otherwise~~ under this Agreement.

#### **20.15 Survival.**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement shall survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

#### **20.16 Publicity.**

- (a) Except as provided in **Section 20.16(b)**, Contractor shall not use the name of OCA or the State, or refer to OCA directly or indirectly in any media release or public announcement, relating to this Agreement or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations (other than proposals or reports submitted to OCA, an administrative agency of the State, or the federal government).
- (b) Except with prior written consent of OCA, Contractor shall not publish any media release or public announcement relating to this Agreement or its subject matter, including but not limited to, in any promotional or marketing materials, customer lists, business presentations (other than as required by OCA under this Agreement or by applicable law), or results of Contractor's performance under this Agreement. Contractor shall provide

OCA a copy of any such pre-approved publication not less than five (5) Business Days prior to its intended public release. Contractor shall provide additional copies at the request of OCA.

**20.17 Service Marks.**

Contractor agrees that it shall not, without OCA's prior written consent, use any of the names, service marks or trademarks of OCA in any of its advertising or marketing materials.

**20.18 Export.**

The Parties acknowledge that certain Equipment, Materials and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the Laws of the United States, the European Union, the United Nations and other jurisdictions. Without limiting the Parties' obligations under **Section 14.10**, no Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such Laws and, to the extent within Contractor's control, Contractor shall be responsible for, and shall coordinate and oversee, compliance with such export Laws in respect of such items exported or imported hereunder.

**20.19 No Third Party Beneficiaries.**

This Agreement is entered into solely between, and may be enforced only by, OCA and Contractor and shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

**20.20 Covenant Against Pledging.** [\[This clause would prohibit normal financing arrangements. Why is this required?\]](#)

Contractor agrees that, without the prior written consent of OCA, it shall not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from OCA under this Agreement for any reason whatsoever. To the extent OCA permits Contractor to assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from OCA under this Agreement, (i) Contractor shall continue to be OCA's sole point of contact with respect to this Agreement, including with respect to payment, and (ii) the person or Entity to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered shall not be considered a third party beneficiary under this Agreement and shall not have any rights or causes of action against OCA.

**20.21 Solicitation and Hiring of Employees.**

Subject to applicable laws, and except as expressly set forth herein, during the Term and for a period of twelve (12) months thereafter, Contractor shall not

directly or indirectly recruit for employment in a position involved in the performance of Contractor's obligations under this Agreement, any employees of OCA without the prior approval of OCA. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.

#### **20.22 Further Assurances.**

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

#### **20.23 Liens.**

Contractor shall not file, or by its action or inaction permit one of the Contractor Personnel to file, any liens on or against property or realty of OCA. In the event that any such liens arise as a result of Contractor's action or inaction, Contractor shall obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) Business Days. If Contractor fails to do so, OCA may, in its sole discretion, pay the amount of such lien, and/or deduct such amounts from payments due to the Contractor.

#### **20.24 Covenant of Good Faith, Commercially Reasonable Efforts.**

Each Party agrees that, in its performance of, and in its respective dealings with the other Party under or in connection with this Agreement, it shall at all times (i) act in good faith, and (ii) use commercially reasonable efforts (except where a higher standard is set forth in this Agreement).

#### **20.25 Acknowledgment.**

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, with the assistance of legal counsel, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

#### **20.26 References.**

Unless otherwise directed by OCA, Contractor shall name OCA as a reference no less than five (5) times per Contract Year for those prospective Contractor customers who are governmental agencies within the United States. Notwithstanding **Section 12.1**, but subject to appropriate confidentiality arrangements and applicable Law, Contractor acknowledges and agrees that OCA may freely discuss all aspects of Contractor's performance and OCA's satisfaction with such performance with prospective Contractor customers.

Contractor shall provide such prospective Contractor customers with appropriate OCA contact information.

**~~20.27 Guaranty.~~**

~~As a material condition to the effectiveness of this Agreement, Contractor shall within ten (10) Business Days after the execution of this Agreement, either execute or cause to be executed and delivered to OCA a guaranty or a parent guaranty in the form set forth in Exhibit 6.~~

*[Signature Page to Follow]*

***Authority to Execute.***

IN WITNESS WHEREOF, the Parties have executed this Master Services Agreement in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

Texas Office of Court Administration (on  
behalf of the State of Texas)

[\_\_\_\_\_]

\_\_\_\_\_  
David Slayton  
Administrative Director

\_\_\_\_\_  
[\_\_\_\_\_]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



# **Exhibit 1 - Definitions Master Services Agreement**

**OCA Contract No. 212-20-0385**

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Between

**Texas Office of Court Administration (OCA)**

*and*

**Contractor**

Term	Definition
Accept, Acceptance, or Accepted	Means OCA's written acceptance of any Deliverable, which may be given or withheld in accordance with the Agreement.
Acceptance Review Period	Has the meaning given in <b>Section 4.5(a)(i)</b> of the Agreement.
Affiliate	Means with respect to an Entity, any other Entity that directly or indirectly controls, is controlled by, or is under common control with that Entity at the time in question.
Agreement	Means the final version of the Master Services Agreement between OCA and Contractor relating to the subject matter of the RFO, to which this <b>Exhibit 1</b> is attached.
Assistance Event	Means (i) any termination (in whole or in part) under, or the expiration of, the Agreement, or (ii) the discontinuance of the provision of the Services (in whole or in part) in respect of OCA.
Audit Period	Has the meaning given in <b>Section 9.1(a)</b> of the Agreement.
Authorized User(s)	Means, unless otherwise indicated, all Courts and any individual, system or Entity authorized to access, use or file Documents and use the Services provided by Contractor under the Agreement.
Available	Means the Services are available and operable for access and use by its Authorized Users over the Internet in full conformity with the Specifications.
Bankruptcy Code	Has the meaning given in <b>Section 19.4(b)</b> of the Agreement.
Bankruptcy Rejection	Has the meaning given in <b>Section 19.4(b)</b> of the Agreement.
Baseline Schedule	Means the approved version of a project schedule set forth in the Statement of Work that can be changed only through formal change control procedures and is used as a basis for comparison to actual results.
Benchmarker	Has the meaning given in <b>Section 9.2(a)</b> of the Agreement.
Business Day	Means each day from Monday through Friday 7:00 a.m. through 6:00 p.m. (Central Time), excluding national holidays as defined by Tex. Gov't Code § 662.003(a).

Term	Definition
CAP Notice	Has the meaning set forth in <b>Section 5.3(b)</b> of the Agreement.
Cardholder Data	Means any personally identifiable information associated with the holder of a credit or debit card.
Change Request	Means a written instrument in a form approved by OCA that states a change in or an addition to any Contractor's obligation under the Agreement.
Charges	Means the fixed charges and fees for Contractor's provision of the Services and the charges and fees for the Deliverables.
Charges Benchmarking	Has the meaning set forth in <b>Section 9.2(a)</b> of the Agreement.
Commencement Date	Means 12:00 a.m., Central Time, on the day following the date of the first site deployed into production, or such other date as the Parties may agree upon in writing.
Confidential Information	Means (i) all information marked confidential, restricted or proprietary by either Party, (ii) any certain non-public, sealed or redacted e-Filing Data and (iii) any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked. Contractor's Confidential Information shall not include Confidential Information of OCA; provided, however, that characterization of information as Confidential Information of Contractor shall not limit or restrict the rights of OCA to exercise its rights (including rights related to auditing and benchmarking) provided for under the Agreement.
Contract Records	Has the meaning given in <b>Section 9.1(a)</b> of the Agreement.
Contract Year	Means each OCA Fiscal Year comprising of a twelve (12) month period commencing on the Commencement Date and each twelve (12) month period thereafter during the Term. If any Contract Year is less than twelve (12) months, the rights and obligations under the Agreement that are calculated on a Contract Year basis will be proportionately adjusted for such shorter period.
Contractor	Has the meaning set forth in the preamble to the Agreement.
Contractor Laws	Has the meaning given in <b>Section 14.10(e)</b> of the Agreement.
Contractor	Has the meaning given in <b>Section 13.1(a)</b> of the Agreement.



Term	Definition
Owned Materials	
Contractor Personnel	Means those employees, representatives, contractors, Subcontractors, and agents of Contractor assigned to provide Services under the Agreement.
Contractor Program Manager	Means the Contractor representative, designated by Contractor in accordance with <b>Section 6.2</b> , responsible for both the day-to-day relationship with OCA as well as the delivery of all Services to OCA.
Contractor Project Manager	Means the Contractor representative, designated by Contractor in accordance with <b>Section 6.1</b> of the Agreement to manage the Implementation Services.
Contractor Sites	Means, individually and collectively, the facilities owned or leased by Contractor (or its Affiliates or Subcontractors) from which Contractor (or its Affiliates or Subcontractors) provides any Services.
Corrective Action Plan	Means a written action plan prepared by Contractor that (i) clearly identifies the applicable problem or failure, (ii) describes the desired situation going forward, and (iii) sets forth the specific steps that shall be taken to solve the identified problem or correct the identified failure.
Courts	Has the meaning given in the recitals to the Agreement.
Deliverable	Means any Material, Software, or System that constitutes a pay point and is developed for, on behalf of, or provided to OCA in the course of Contractor's performance of the Statement of Work or a Change Request.
Deliverable Expectation Document	Means the Deliverable Expectation Document provided by Contractor to OCA that defines the approach and criteria for satisfactory completion and approval of all Deliverables.
Deliverable Fee(s)	Means the amounts specified in <b>Exhibit 2</b> , to be paid or credited to OCA by Contractor in recognition of the diminished value of the Services resulting from Contractor's failure to meet the agreed upon obligations, and not as a penalty.
Developed Materials	Means any Materials or any modifications, enhancements, improvements, upgrades or derivative works of Materials that are developed pursuant to the Agreement or otherwise paid for by OCA under the Agreement. <a href="#"><u>All Contractor Owned Materials are excluded from this definition.</u></a>

<b>Term</b>	<b>Definition</b>
DIR	Means the Department of Information Resources.
Disaster Recovery Plan	Means the Disaster Recovery & Business Continuity Plan, as attached to the Statement of Work in <b>Exhibit 2</b> to the Agreement.
Disclosing Party	Means a Party disclosing Confidential Information to the Receiving Party as permitted under the Agreement.
Effective Date	Has the meaning given in the preamble of the Agreement.
eFileTexas	Has the meaning given in the recitals to the Agreement.
eFileTexas 2.0	Has the meaning given in the recitals to the Agreement.
e-Filing Data	Means any data, metadata or information of or regarding either OCA or any Authorized User that is provided to or obtained by Contractor in connection with the performance of Contractor's obligations under the Agreement. e-Filing Data includes Cardholder Data and any data and information with respect to the constituency of any Authorized User. e-Filing Data also includes (i) any data filed or used in connection with the Services, including any complaints, answers, briefs, exhibits, motions, responses, subpoenas, claims of appeal, docketing statements, and petitions, (ii) any and all other legal documents filed with, processed through, or used in or with the Services, (iii) any data that resides in or is accessed through Software, Equipment or Systems provided, operated, supported, or used by Contractor in connection with the Services, as well as information derived from this data and information, or (iv) any metadata in connection with the provision of the Services.
e-Filing Personal Data	Means that portion of e-Filing Data (including such data that pertains to Authorized Users) that (i) is subject to any Privacy Laws (including, but not limited to, information which OCA discloses that consists of personal Confidential Information); (ii) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (iii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, answers to security questions, or other personal identifiers).
Entity or Entities	Means a governmental body, agency, unit or division, corporation, partnership, joint venture, trust, limited liability company, limited liability

Term	Definition
	partnership, association, or other organization or entity.
Equipment	Means the computer, telecommunications, and facility-related hardware, equipment, and peripherals (and all modifications, replacements, upgrades, enhancements, documentation, materials, and media related thereto) that are used in connection with the Services by Contractor.
Extraordinary Event	Has the meaning given in <b>Section 10.3(a)</b> of the Agreement.
Fiscal Quarter	OCA Fiscal Quarters end on November 30, February 28 or 29, May 31 and August 31.
Fiscal Year	OCA Fiscal Year commences on September 1 and ends on August 31.
Force Majeure Event	Has the meaning given in <b>Section 17.2(a)</b> of the Agreement.
Highly-Sensitive Personal Information	Means an individual's (i) government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); or (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account.
Historically Underutilized Business(es)	Shall have the meaning given to such term by the Texas Comptroller of Public Accounts.
Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA")	Has the meaning given in <b>Section 14.7(q)</b> of the Agreement.
Implementation Failure Event	Has the meaning set forth in <b>Section 4.1(e)(ii)</b> of the Agreement.
Implementation Services	Means the transition activities, functions and Deliverables described in the Statement of Work, and such other tasks as are necessary to enable Contractor to provide the Services.

Term	Definition
Income Tax	Means any tax on or measured by the net income of a Party (including taxes on capital, net worth or revenue that are imposed as an alternative to a tax based on net or gross income), or taxes which are of the nature of excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax, or franchise tax for the privilege of doing business.
Initial Term	Has the meaning given in <b>Section 3.1(a)</b> of the Agreement.
Intellectual Property Right	Means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, privacy, proprietary, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
IRS	Means the Internal Revenue Service, a division of the U.S. Treasury Department responsible for collecting taxes.
ITIL	Means the "Information Technology Infrastructure Library," a world-wide recognized best-practice framework for the management and delivery of IT services throughout their full life-cycle.
Laws	Means all federal, state and local laws, statutes, ordinances, regulations, rules, executive or court orders, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof. References in the Agreement to any Law shall be to such Law in changed or amended form or to a newly adopted Law replacing a prior Law.
Losses	Means all costs, losses, liabilities, damages (including punitive and exemplary damages), fees (including attorneys' fees), fines, penalties, settlements, judgments, interest and claims (including taxes), in each case that a court may award to a Party or Third Party or which are otherwise included in the amount payable to a Party or Third Party and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, experts, settlement, judgment, interest and penalties), as incurred.
Major Release	Means a new version of Software that includes changes to the architecture and/or adds new features and functionality in addition to the original functional characteristics of the preceding Software release. These releases are usually identified by full integer changes in

Term	Definition
	the numbering, such as from “7.0” to “8.0,” but may be identified by the industry as a major release without the accompanying integer change.
Malicious Code	Means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the Software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code.
Malicious Code Recovery Services	Has the meaning given in <b>Section 14.9</b> of the Agreement.
Materials	Means all reports, management plan, issue management plan, project deployment plan, project schedule, configuration plan, stakeholder outreach, communication plan, any other plans, artifacts, formulae, algorithms, processes, process improvements, procedures, designs, concepts, methodologies, trade secrets, technology, Software (in both object and source code form), databases, Specifications and all records thereof, including documentation, design documents and analyses, interface documentation, studies, tools, plans, models, flow charts, reports and drawings.
Minor Release	Means a scheduled release containing small functionality updates and/or accumulated resolutions to defects or non-conformances made available since the immediately preceding release (whether Major Release or Minor Release). Minor Releases shall include “Maintenance Releases” which are supplemental to and made available between Major Releases and other Minor Releases, issued and provided under specific Contractor Service Level or maintenance obligations, and contain only accumulated resolutions or mandated changes. These releases are usually identified by a change in the decimal numbering of a release, such as “7.12” to “7.13.”
New Services	Means services requested by OCA or required by applicable Laws (without limiting the obligation of the Parties under <b>Section 4.4</b> of the Agreement) that are within the scope of the RFO and (i) that are different from the Services, (ii) that require materially different levels of effort or resources from Contractor to provide the Services, and (iii) which are not required for Contractor to meet the Service Levels. For the avoidance of doubt, New Services shall not include (a) increases in the volume of Services, or (b) the disaggregation of an existing service

Term	Definition
	from the Statement of Work.
Noncompliance	Means each instance that a Deliverable fails to meet its Acceptance criteria, or fails to fulfill the requirements of the Specifications or the Agreement.
Notice of Election	Has the meaning given in <b>Section 16.6(a)</b> of the Agreement.
OAG	Means the Office of the Texas Attorney General.
Office of Court Administration (“OCA”)	Has the meaning given in the preamble to the Agreement.
OCA Auditors	Has the meaning given in <b>Section 9.1(b)</b> of the Agreement.
OCA Code of Ethics	Means OCA’s ethics code and policies, including the conflicts of interest and sanctions rules and policies.
OCA Confidential Information	Means Confidential Information of OCA, and includes Developed Materials, e-Filing Data, Work Product, attorney-client privileged materials, attorney work product, research information, information that contains trade secrets, human resources and personnel information, or other information or data obtained, observed, received, transmitted, processed, stored, archived or maintained by Contractor under the Agreement.
OCA Contractor(s)	Means any third party providing services to OCA (including the former or future outsourcing service provider).
OCA Indemnitees	Has the meaning given in <b>Section 16.1</b> of the Agreement.
OCA Information Resources Manager	Means the individual to whom all Contractor communications concerning this Agreement may be addressed, designated by OCA.
OCA Site(s)	Means the facilities that are provided by OCA for use by Contractor to the extent necessary to provide the Services as well as those OCA and OCA Contractor locations at or to which Contractor is to provide the Services.
OCA Standard(s)	Means (A) the standards, policies, practices, processes, procedures and controls to be adhered to and enforced by Contractor in the performance of the Services, including those identified in the Agreement, and (B) the associated IT technologies architectures,

<b>Term</b>	<b>Definition</b>
	standards, products and systems to be provided, operated, managed, supported and/or used by Contractor in connection therewith.
Party and Parties	Has the meaning given in the recitals to the Agreement.
Peer or Peer Group	Means a representative sampling of other outsourced arrangements that share substantially similar attributes to OCA with respect to size, scope and nature of overall services or components of the services, geographic scope of overall services or components of the services, quality standards and service levels, technology, contract terms (to the extent available to the Benchmarker) and payment and service level credit structure for the applicable Services under the Agreement. Each such sample within the Peer Group is deemed a "Peer".
Privacy Laws	Means Laws relating to data privacy or data protection.
Problem	Means any material problem, including any (i) Security Incident, (ii) failure to deliver any Services, (iii) failure to deliver any Service Levels, (iv) situation that has negatively impacted or reasonably could negatively impact the maintenance of OCA's internal controls or compliance with OCA's physical or information security, operations, and any policies, procedures, or services described in this Agreement, the Statement of Work or work authorization, or applicable Laws; (v) situation that has had or reasonably could have any adverse impact on the Services (including, but not limited to any failure by Contractor to comply with its obligations under this Agreement, any delay in delivery or performance, change in control or change in legal form of the Contractor, or infringement of third-party rights or any claim made by a third-party in respect of such rights); or (vi) other act, omission or development which would be important for OCA to be aware of in order to take precautions to prevent an adverse effect to its businesses or reputation.
Production Services	Means all Services in connection with hosting, operating, administrating, supporting, maintaining and providing OCA and Authorized Users with access to an electronic filing System, an electronic filing System, a document access System, a redaction System, a forms assembly System, and other services as may be specified in the Statement of Work or by OCA through any Accepted Change Requests.
Quality Assurance	Means the actions, planned and performed, to provide confidence that all processes, Systems, Equipment, Software, and components that influence the quality of the Services are working as expected

Term	Definition
	individually and collectively.
Quarterly Charges	Means Charges due and owing in any quarter during the Term, including, to the extent applicable, payments for Services.
Quarterly Invoice	Has the meaning given in <b>Section 11.1(b)</b> of the Agreement.
Receiving Party	Means a Party receiving Confidential Information of the other Party.
Release Event	Has the meaning given in <b>Section 13.1(e)</b> of the Agreement.
Renewal Term	Has the meaning given in <b>Section 3.1(b)</b> of the Agreement.
Reports	Has the meaning given in <b>Section 7.1(a)</b> of the Agreement.
Request for Offer (“RFO”)	Has the meaning given in the recitals of the Agreement.
Required Consents	Means the consents (if any) required to be obtained (i) to assign or transfer to Contractor OCA licensed Third Party Materials, Third Party contracts, Equipment leases or acquired assets (including related warranties); (ii) to grant Contractor the right to use and/or access the OCA licensed Third Party Materials or Third Party contracts; (iii) to grant OCA and/or its designee(s) the right to use and/or access the Contractor Owned Materials, Third Party Materials and Equipment acquired, operated, supported, used, or required to be used by Contractor in connection with providing the Services; (iv) to assign or transfer to OCA and/or its designee(s) any Developed Materials to the extent provided in the Agreement; (v) to assign or transfer to OCA and/or its designee(s) Contractor Owned Materials, Third Party Materials, Third Party contracts, Equipment leases or other rights following the Term to the extent provided in the Agreement; and (vi) all other consents required from third parties in connection with Contractor’s provision of, and OCA’s receipt and use of, the Services and Contractor’s performance of its obligations under the Agreement.
Response	Has the meaning given in the recitals of the Agreement.
Root Cause Analysis	Means the formal process to be used by Contractor and approved by OCA to diagnose the underlying cause of problems at the lowest reasonable level so that effective corrective action can be taken.
Scheduled Downtime	Has the meaning given in <b>Section 7.4(c)</b> of the Agreement.



Term	Definition
Secondary Backup Facility	Has the meaning given in <b>Section 7.3(a)(viii)</b> of the Agreement.
Security Incident	Means (i) any act or omission that compromises either the security, confidentiality, or integrity of e-Filing Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor, or by OCA in the event Contractor has access to OCA's Systems, that relate to the protection of the security, confidentiality or integrity of e-Filing Data, including any unauthorized access to or disclosure of e-Filing Data, or (ii) any actual or alleged breach of the Agreement relating to such privacy and data security practices.
Service Level Agreement	Means the Service Level Agreement set forth in <b>Exhibit 3</b> to the Agreement, and its related attachments, including the Service Level Requirements.
Service Level Reimbursements	Means the monetary amounts that the Contractor shall be obligated to pay to OCA, as more detailed in in the Service Level Agreement.
Service Level Requirements	Means the Service Level Requirements set forth in the Service Level Requirements spreadsheet attached to the Service Level Agreement.
Service Levels	Means, individually and collectively, any of the following: the quantitative and qualitative performance standards for the Services, the error severity levels and corresponding required service level responses, response times, resolution, and resolution times as set forth in the Service Level Agreement and the Service Level Requirements set forth therein.
Service Taxes	Means all sales, use, excise, and other similar taxes that are assessed against either Party on the provision of the Services as a whole, or on any particular Service received by OCA from Contractor, excluding Income Taxes.
Services	Means all services, functions and responsibilities to be performed by Contractor under the Agreement and the Statement(s) of Work, including, but not limited to, all services in connection with developing, operating, maintaining and transitioning an electronic filing System, a document access System, a redaction System, a forms assembly System, all Production Services, Implementation Services, Disaster Recovery Services, any New Services, and Termination Assistance Services.
Software	Means all Materials consisting of Software programs and programming (and all modifications, replacements, upgrades, enhancements,

Term	Definition
	documentation, materials and media related thereto), including antivirus software, application software, development tools and system software.
Source Code Deposit Materials	Has the meaning given in <b>Section 13.1(e)</b> of the Agreement.
Specifications	Means the technical, design and/or functional specifications in OCA's description of any Services, or otherwise agreed upon in writing by the Parties.
State	Means the State of Texas, unless expressly stated otherwise.
Statement of Work	Means the statement of work, as amended, modified, or supplemented by any Change Requests that have been Accepted pursuant to the terms of the Agreement, including the initial statement of work set forth in <b>Exhibit 2</b> to the Agreement and its related attachments.
Subcontractors	Means subcontractors (of any tier) of Contractor, including Affiliates of Contractor, performing Services under the Agreement pursuant to <b>Section 7.5</b> of the Agreement.
System	Means an interconnected grouping of manual or electronic processes, including Equipment, Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, upgrades or enhancements to such System. Systems shall include all Systems in use or required to be used as of the Commencement Date, all additions, modifications, substitutions, upgrades, or enhancements to such Systems and all Systems installed or developed by or for OCA or Contractor during the Term.
Technology Evolution	Means any improvement, upgrade, addition, modification, replacement, or enhancement to the standards, policies, practices, processes, procedures, methods, controls, scripts, product information, technologies, architectures, equipment, Software, systems, tools, products, transport systems, interfaces and personnel skills available to provide the Services in line with the best practices of first tier leading providers of services that are the same as or similar to the Services. Technology Evolution includes, as relating to such items for such purpose: higher capacity, further scaling and commercializing of processes, more efficient and scalable processes, new versions and types of applications and systems/network Software, new operational or IT Infrastructure processes, and new types of hardware and

Term	Definition
	communications equipment that shall enable Contractor to perform the Services more efficiently and effectively as well as enable OCA to meet and support its operational requirements and strategies.
Term	Has the meaning set forth in <b>Section 3.1(b)</b> of the Agreement.
Termination Assistance Plan	Has the meaning set forth in <b>Section 4.3(c)</b> of the Agreement.
Termination Assistance Services	Means (i) the Services (including the terminated, in-sourced, resourced or expired Services, the Services described in <b>Section 4.3</b> of the Agreement, and any replacements thereof or supplements thereto), to the extent OCA requests such Services during a Termination Assistance Services period; (ii) Contractor's cooperation with OCA and its designee(s) in the orderly transfer of the Services (or replacement or supplemental services) to OCA and its designee(s); (iii) Contractor's cooperation with OCA and its designee(s) in providing data as requested to define requirements for a new procurement; (iv) Knowledge transfer requested by OCA for replacement services; and (v) any New Services requested by OCA in order to facilitate the transfer of the Services (or replacement or supplemental services) to OCA and its designee(s).
Termination Charge	Means the sum of (i) amounts due and owing for completed Deliverables in <b>Exhibit 4</b> plus (ii) for each incomplete Deliverable listed in <b>Exhibit 4</b> , the product of the percentage completed of such incomplete Deliverable multiplied by the amount set forth in <b>Exhibit 4</b> for such completed Deliverable. <a href="#">Additional Termination Charges are described in Exhibit 4.</a>
Third Party	Means, whether or not capitalized, a legal Entity, company, or person(s) that is not a Party to the Agreement, and is not an Affiliate of a Party.
Third Party Materials	Means Materials that are owned by Third Parties, including any Subcontractors that are Third Parties, and provided under license or lease to Contractor or OCA and that (i) have been or will be used to provide or receive the Services, (ii) are in use or required to be used as of the Commencement Date, or (iii) constitute programs or programming licensed and/or leased to OCA or Contractor during the Term.
Third Party Software	Means Software owned by a Third Party that is used by Contractor in the performance of Services.

Term	Definition
Warranty Period	Means the period commencing on the Effective Date and continuing until the date that is one hundred twenty (120) days after the end of the Term.
Work Product	Means (i) all reports and plans, including business requirements documents, design documents, manuals, training and knowledge transfer materials and documentation, and (ii) any literary works and other works of authorship created under the Agreement that express, embody or execute or perform a function, method or process that is specific to the business of OCA, <u>but excluding the Software or any Third Party Software</u> . Work Product includes customized reports, manuals and forms, but not the original unmodified versions used by Contractor as a starting point for creating the customized version.

Document comparison by Workshare 10.0 on Monday, June 8, 2020 8:49:39 PM

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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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