

Town of Normal

SaaS Contract

_____ (Service Provider)

[Date]

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Software as a Service Contract

This contract is dated _____ 2022 and is between the Town of Normal, an Illinois home-rule municipal corporation (“**Town**”) and _____, a _____ (“**Vendor**”).

The Town requires third-party “software as a service” with respect to certain of its information-technology needs.

The Town issued a request for proposals for the service, and the Vendor submitted a proposal to perform the services.

The Board of Trustees of the Town of Normal (“**Town Council**”) passed Resolution _____, which accepted the Vendor’s proposal and authorized the execution of a contract in conformance with that proposal.

The parties, therefore, agree as follows:

1. The Services

1.1. Generally

This contract sets forth the terms and conditions under which the Vendor will license to the Town certain hosted software and provide all other services necessary for the productive use of the software, including customization, integration, user identification and password-change management, data import and export, monitoring, technical support, maintenance, training, backup and recovery, and change management (the license and other services collectively, the “Services”) as further set forth in a Statement of Work or in other statements of services containing substantially similar information and identified as an Exhibit 1.

1.2. Acknowledgment of license grant

For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this contract constitutes a license grant of intellectual property in software form to the Town by the Service Provider.

1.3. Authorized Users

Unless otherwise limited in Exhibit 1, the Service Provider hereby grants the Town a renewable, irrevocable (unless otherwise provided in this contract), nonexclusive, royalty-free, and worldwide right for any Subscriber employee, contractor, or agent, or any other individual or entity authorized by the Town (each, an “**Authorized User**”) to access and use the Services. Other than those limitations expressly described in Exhibit 1, Authorized Users will have no other limitations on their access or use of the Services.

1.4. Changes in the number of Authorized Users

- 1.4.1. The Services are provided on a tiered basis, as set forth in Exhibit 1. The Town agrees to license the initial number of Authorized Users described in Exhibit 1 (the “**Minimum**

User Commitment”). The Town is entitled to increase or decrease the number of Authorized Users on an as-requested basis.

- 1.4.2. If the Town elects to change the number of Authorized Users, then the Service Provider shall reduce or increase Authorized Users to the corresponding tier described in Exhibit 1 and adjust the prospective Services Fees accordingly no later than five business days after the Town’s written request.

1.5. Control and location of Services

- 1.5.1. **Method and means.** The method and means of providing the Services will be under the exclusive control, management, and supervision of the Service Provider, giving due consideration to the Town’s requests.
- 1.5.2. **Location.** Except as otherwise specified in Exhibit 1, the Services (including data storage) will be provided solely from within the continental United States and on computing and data-storage devices located therein.
- 1.5.3. **Subcontractors; assignments.** The Service Provider shall not, without the Town’s prior written consent, enter into any subcontract for the performance of the Services or assign or transfer any of its rights or obligations under this contract. Any subcontract, assignment, or transfer in violation of this section will be void and without further effect and will constitute a material breach of this contract. The Service Provider’s use of subcontractors will not relieve the Service Provider of any of its duties or obligations under this contract.
- 1.5.4. **Storage.** The Services must include the applicable allocation of base data storage described in Exhibit 1. The Service Provider shall immediately notify the Town when the Town has reached 80% of the Town’s then-current data-storage maximum. Within five days after the Town’s request, the Service Provider shall make additional storage available to the Town at the rates described in Exhibit 1.
- 1.5.5. **Development and test environments.**
 - 1.5.5.1. In addition to production use of the Services, the Town is entitled to one development and one test environment for use by Authorized Users at no additional charge. These non-production environments must have the same data storage and processing capacities as the production environment.
 - 1.5.5.2. The Service Provider shall cooperate with the Town’s requests in managing the non-production environments such as refreshing Town Data upon request.

1.5.6. **Documentation.**

- 1.5.6.1. The documentation for the Services (“Documentation”) must accurately and completely describe the functions and features of the Services, including all subsequent revisions thereto.
- 1.5.6.2. The Documentation must be understandable by a typical end user and must provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services.
- 1.5.6.3. The Town may make any number of additional copies of the Documentation at no additional charge.

1.5.7. **Changes in functionality.**

- 1.5.7.1. During the term of this contract, the Service Provider shall not reduce or eliminate functionality in the Services. If the Service Provider has reduced or eliminated functionality in the Services, the Town, in addition to any other rights or remedies, may: (i) immediately terminate this contract and be entitled to return of any prepaid fees; or (ii) determine the value of the reduced or eliminated functionality, and the Service Provider shall immediately adjust the Services Fees accordingly on a prospective basis.
- 1.5.7.2. If the Service Provider has introduced like functionality in other services, then the Town will have an additional license and subscription right to use and access the new services at no additional charge, with the same rights, obligations, and limitations as for the Services.
- 1.5.7.3. If the Service Provider increases functionality in the Services, then the Service Provider shall provide the increased functionality to the Town without any increase in the Services Fees.

- 1.5.8. **No effect of click-through terms and conditions.** If an Authorized User is required to “click through” or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, those terms and conditions will not be binding and will have no for or affect as to the contract.

2. Service Levels

2.1. Time is of the essence

For the term of this contract, the Service Provider shall provide the Services, force majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Level Standards, as described in Exhibit 1, time being of the essence.

2.2. Service Level reporting

- 2.2.1. On a monthly basis, in arrears and no later than the 15th calendar day of the subsequent month following the reporting month, the Service Provider shall provide reports to the Town describing the performance of the Services and of the Service Provider as compared to the Service Level Standards.
- 2.2.2. The reports must be in a form agreed to by the Town and must contain at least all of the following:
 - 2.2.2.1. Actual performance compared to the Service Level Standard.
 - 2.2.2.2. The cause or basis for not meeting the Service Level Standard.
 - 2.2.2.3. The specific remedial actions that the Service Provider has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved.
 - 2.2.2.4. Any Performance Credit due to the Town.
- 2.2.3. The Service Provider and Town will meet upon the request of the Town to review the performance of the Service Provider as it relates to the Service Levels.
- 2.2.4. If the Service Provider fails to provide a report for a Service Level in the applicable timeframe, then the Service Level will be deemed to be completely failed for the purposes of calculating a Performance Credit.
- 2.2.5. The Service Provider shall, without charge, make the Town's historical Service Level reports to the Town upon request.

2.3. Failure to meet Service Level Standards

- 2.3.1. As further described in Exhibit 1, if the Service Provider does not meet a Service Level Standard, then the Service Provider shall (i) owe to the Town any applicable Performance Credit, as liquidated damages and not as a penalty, and (ii) use its best effort to ensure that any unmet Service Level Standard is subsequently met.
- 2.3.2. Notwithstanding section 2.3.1, the Service Provider shall use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.
- 2.3.3. In no event will the Town be required to notify the Service Provider that a Performance Credit is due as a condition of payment of that Credit.
- 2.3.4. In addition to any other right and remedy under this contract or at law, the Town may immediately terminate this contract and be entitled to a return of any prepaid fees if the Service Provider fails to meet any Service Level Standard: (i) to such an extent that

the Town's ability as determined by the Town, to use the Services is materially disrupted; or (ii) for four months out of any 12-month period.

2.4. Audit of Service Levels

- 2.4.1. No more than quarterly, the Town or the Town's agent may audit the Service Provider's books, records, and measurement and auditing tools to verify Service Level Standard achievement and to determine correct payment of any Performance Credit.
- 2.4.2. If it is determined that any Performance Credit was due to the Town but not paid, then the Service Provider shall immediately owe to the Town the applicable Performance Credit.

3. Support; Maintenance; Additional Services

3.1. Technical Support

The Service Provider shall provide the Technical Support described in Exhibit 1. The Service Fees will be inclusive of the fees for the Technical Support.

3.2. Maintenance

- 3.2.1. The Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure all of the following:
 - 3.2.1.1. The functionality of the Services, as described in the Documentation, is available to Authorized Users.
 - 3.2.1.2. The functionality of the Services is in accordance with the representations and warranties set forth in this contract.
 - 3.2.1.3. The Service Level Standards can be achieved.
 - 3.2.1.4. The Services work with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers.
- 3.2.2. Unless the Town agrees otherwise on a case-by-case basis, the Service Provider shall provide at least 30 days' prior written notice to the Town of all non-emergency maintenance to be performed on the Services. This written notice must include a detailed description of all maintenance to be performed. The Service Provider shall provide as much prior notice as practicable to the Town and shall provide a detailed description of all maintenance performed no greater than one calendar day following the implementation of the emergency maintenance.

3.2.3. Unless the Town agrees otherwise on a case-by-case basis, for nonemergency maintenance, the Town will have 10 business days to test any maintenance changes prior to the Service Provider introducing those maintenance changes into production (the “**Maintenance Acceptance Period**”). If, for good cause, the Town rejects any maintenance changes during the Maintenance Acceptance Period, then the Service Provider shall not introduce the rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, the Town has not rejected the maintenance changes, then those changes will be deemed to be accepted by the Town, and the Service Provider may introduce those changes into production.

3.3. Customization/Integration Services

The Service Provider shall provide the Customization/Integration Services, if any, set forth in Exhibit 1. The Services Fees include the fees for the Customization/Integration Services.

3.4. Training Services

The Service Provider shall provide the Training Services, if any, set forth in Exhibit 1. The Services Fees include the fees for the Training Services.

4. Service Provider’s Audit Rights

4.1. On-premises audits

The Service Provider will have no right to conduct an on-premises audit of the Town’s compliance with the use of the Services.

4.2. Authorized User Certification

No more than once per calendar year, the Service Provider may request from the Town its certification of compliance with the permitted number of Authorized Users as set forth in Exhibit 1. If the actual number of users exceed the permitted number of Authorized Users, then within 30 days of the certification, the Town, at its election, shall either (i) reduce the actual number of users to as to be in compliance with the permitted number of Authorized Users, in which case no additional Services Fees will be due to the Service Provider or (ii) acquire the appropriate number of Authorized Users at the rate specified in Exhibit 1 so as to be in compliance with the permitted number of Authorized Users.

5. Change Control Procedure

5.1. Scope changes authorized.

The Town may, upon written notice, request changes to the scope of Services under this contract.

5.2. Procedure for scope changes.

- 5.2.1. To make a request for an increase in the scope of the Services, the Town must notify the Service Provider in writing. Within five business days after receiving the request (or such other time as agreed by the parties) and

6. Term; Termination; Renewals

6.1. Term

- 6.1.1. The term of this contract begins on the date set forth in the introductory clause and expires on the first anniversary of that date (“**Initial Term**”). Upon the expiration of the Initial Term, the term of this contract will renew for successive one-year periods (“**Renewal Term**”) unless either party refuses the renewal as set forth in this section 6.1.
- 6.1.2. At least 60 days but not more than 120 days before the expiration of the Initial Term and of any Renewal Term, the Service Provider shall send written notice to the Town of the date that the Initial Term or Renewal Term expires and the date that any notice of refusal must be given by either party.
- 6.1.3. A party may refuse a renewal by sending written notice to the other party. To refuse a renewal, the Service Provider must send the written notice to the Town at least 45 days before the expiration of the term. If the Service Provider has sent notice as required under section 6.1.2, then the Town may refuse a renewal by sending the written notice to the Service Provider at least 45 days before the expiration of the term. If the Service Provider has not sent notice as required under section 6.1.2, then the Town may refuse a renewal by sending the written notice to the Service Provider at any time before the expiration of the term.

6.2. Termination for cause

Either party may terminate this contract for the other’s material breach on 30 days’ written notice, unless the other party cures the breach before the effective date of the termination. A termination will become effective immediately upon the written notice without the opportunity to cure if either (i) this contract provides that “time is of the essence” with regard to the performance subject to the breach or (ii) the injury caused by the breach cannot be remedied by performance after notice of termination.

6.3. Payments upon termination

Upon the termination of this contract, (i) the Town shall pay to the Service Provider all undisputed amounts due and payable hereunder, if any, and (ii) the Service Provider shall pay to the Town all amounts due and payable under this contract, such as Performance Credits and prepaid fees, if any.

6.4. Return of Town Data

- 6.4.1. Within five business days after the effective date of the expiration or termination of this contract, the Service Provider shall deliver to the Town a final extract of the Town Data in the format specified by the Town. This delivery must be made without charge and without any conditions or contingencies whatsoever (including the payment of any fees due to the Service Provider).
- 6.4.2. The Service Provider shall certify to the Town the destruction of any Town Data within its possession or control, but that destruction may not occur until the Town Data has been delivered to the Town under section 6.4.1.
- 6.4.3. This section 6.4 will survive the termination or expiration of this contract.

7. Transition Services

7.1. Transition Services required

Upon the termination or expiration of this contract or of any Services under this contract, the Service Provider shall provide to the Town and any successor service provider assistance reasonably requested by the Town to effect the orderly transition of the Services, in whole or in part to the Town or to the successor service provider (“**Transition Services**”).

7.2. Provision of Transition Services

- 7.2.1. The Transition Services must be provided on a time-and-materials basis and include the following:
 - 7.2.1.1. Developing a plan for the orderly transition of the terminated Services from the Service Provider to the Town or a successor service provider.
 - 7.2.1.2. If required, transferring the Town Data to the successor service provider.
 - 7.2.1.3. Using reasonable efforts to assist the Town in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by the Service Provider in connection with the Services.
 - 7.2.1.4. Using reasonable efforts to make available to the Town, under mutually agreeable terms and conditions, any third-party services then being used by the Service Provider in connection with the Services.
 - 7.2.1.5. Any other activity upon which the parties may agree.

7.3. Continued Services use

Notwithstanding any provision of this contract, if the Town terminates this contract due to the Service Provider’s material breach, then, as a Transition Service, the Town may elect to use the

Services for a period of up to six months from the date of termination at a reduced rate of 20% of the then-current Service Fees for the terminated Services.

7.4. Application of contract to Transition Services

All applicable terms and conditions of this contract will apply to the Transition Services.

7.5. Survival of Transition-Services requirements

This section 7 will survive the termination or expiration of this contract.

8. Fees; Billing

8.1. Compensation

- 8.1.1. The Town will be responsible for and shall pay to the Service Provider the fees as set forth in Exhibit 1, subject to the terms and conditions contained in this contract.
- 8.1.2. Any amount due to the Services provider for the Services for which payment is not otherwise specified will be due and payable 30 business days after receipt by the Town of an invoice from the Service Provider.

8.2. Billing

- 8.2.1. Unless otherwise provided for under Exhibit 1, the Service Provider shall bill to the Town the sums due under Exhibit 1 by the Service Provider's invoice. The Service Provider's invoice must contain all of the following:
 - 8.2.1.1. The Town's purchase order number, if any, and the Service Provider's invoice number.
 - 8.2.1.2. A description of the Services for which an amount is due.
 - 8.2.1.3. The fees or portion thereof that are due.
 - 8.2.1.4. Taxes, if any.
 - 8.2.1.5. Any Performance Credits or other credits;
 - 8.2.1.6. The Total amount due.
- 8.2.2. The Service Provider shall forward invoices in hardcopy format to (applicable Dept. Head).

8.3. Taxes

- 8.3.1. Payment of any taxes, including possessory interest taxes, and Illinois sales and use taxes, levied upon this contract, the transaction, or the services delivered pursuant hereto, will be the obligation of the Service Provider. The Services Fees may not include any respective taxes that may be applicable.

- 8.3.2. The Service Provider represents that it is an independent contractor for the purposes of federal, state, and local taxes.
- 8.3.3. The Service Provider acknowledges that the Town is not responsible for the collection or withholding of any such taxes, including income tax withholding and social-security contributions, for the Service Provider.

8.4. Credits

- 8.4.1. The Town may elect to apply any amounts due to the Town, such as a Performance Credit, from the Service Provider against any current or future fees due to the Service Provider.
- 8.4.2. The Service Provider shall pay to the Town any amount that is not applied under section 8.4.1. The payment must be made within 30 days after the Town's request.
- 8.4.3. This section 8.4 will survive the termination or expiration of this contract.

8.5. Non-binding terms

Any term or condition included in a Town purchase order or a Service-Provider invoice, as the case may be, will be deemed to be solely for the convenience of the respective party, and no such term or condition will be binding on the parties.

8.6. Payment Does Not Imply Acceptance of Services

The granting of any payment by Town, or the receipt thereof by the Service Provider, will in no way lessen the liability of Service Provider to replace unsatisfactory Services although the unsatisfactory character of such work may not have been apparent or detected at the time that the payment was made. Software, components, or workmanship that do not conform to the requirements of this contract may be rejected by Town and in such case must be replaced by Service Provider without delay.

8.7. Auditable records

- 8.7.1. The Service Provider shall maintain accurate records of all fees billable to and payments made by the Subscriber in a format that will permit audit by the Town for a period of no less than three years from when a fee was incurred or a payment was made.
- 8.7.2. Upon the Town's written request, the Service Provider shall provide the Town with a copy of its annual American Institute of Certified Public Accountants Service Organization Control (SOC) 1 type 2 report and SOC 2 type 2 report (for all Trust Services Principles).

8.8. Third-party billing review

For the purpose of determining the competitiveness and appropriateness of fees charged to the Town by the Service Provider, The Town may disclose to a third-party this contract, and any other data pertaining to fees paid or payable to the Town to the Service Provider.

8.9. Limitation of Services suspension

The Service Provider shall not suspend any part of the Services if (i) the Town is disputing any amount due to the Service Provider or (ii) any unpaid by undisputed amount due to the Service Provider is less than 90 days in arrears.

9. Representations and Warranties

9.1. Mutual representations

The Town and the Service Provider each represent all of the following:

- 9.1.1. It has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this contract.
- 9.1.2. Its execution, delivery, and performance of the contract has been duly authorized by it and this contract constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors rights generally, by principles of Illinois municipal law, or by general equitable principles.
- 9.1.3. It will comply with all applicable federal, state, local, or other laws and regulations that apply to the performance by it of its obligations under this contract, and it will obtain all applicable permits and licenses required of it in connection with its obligations under this contract.
- 9.1.4. There is no litigation or other action to which it is a party that, if decided unfavorably to it, would unreasonably be expected to have the potential or actual material adverse effect on its ability to fulfill its obligations under this contract.

9.2. Service Providers representations.

The Service Provider represents all of the following:

- 9.2.1. It is a business duly incorporated, validly existing, and in good standing under the laws of the state of its incorporation.
- 9.2.2. It is in the business of providing the Services.
- 9.2.3. The Services are fit for the ordinary purposes for which they will be used.
- 9.2.4. It is possessed of superior knowledge with respect to the Services.

- 9.2.5. It acknowledges that the Town is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to the Town.
- 9.2.6. It knows the particular purpose for which the Services are required by the Town.
- 9.2.7. It is the lawful licensee or owner of the Services (excluding any Town Data therein) and has all of the necessary rights in the Services to grant the use of the Services to the Town.
- 9.2.8. The Services any other work performed by it under this contract will not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right and will not misappropriate any trade secret of any third party, and it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this contract.
- 9.2.9. It will disclose any third party (which will, for purposes of this contract, be deemed to be a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services, and it will maintain in-force written agreements with that third-party, if any, for the term of this contract.
- 9.2.10. It has the expertise to perform the Services in a competent, workmanlike, and professional manner an in accordance with the highest professional standards.
- 9.2.11. It will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, a “**Virus**”) are introduced into the Town’s computing and network environment by the Services and that, if it transfers a Virus to the Town through the Services, then it will reimburse the Town the actual cost incurred by the Town to remove or recover from the Virus, including the costs of persons employed by the Town.
- 9.2.12. The Services are free of any mechanism that may disable the Services, and no loss of Town Data will result from those items if they are present in the Services.
- 9.2.13. In the case of the Town’s dispute of any Service Provider invoice, it will not withhold the performance of the Services, including access to and use of the Services, Technical Support, Maintenance, and extract of Town Data.
- 9.2.14. The Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit 1 and the Documentation.

10. Town Data

10.1. Ownership

- 10.1.1. The Town's data ("Town Data") includes:
 - 10.1.1.1. The Town's data collected, used, processed, stored, or generated as the result of the use of the Services; and
 - 10.1.1.2. Personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the use of the services, including any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed in this section 10.1.1.2.
 - 10.1.1.3. All Town Data will remain the sole and exclusive property of the Town, and the Town reserves all right, title, and interest in that data.
 - 10.1.1.4. This section 10.1 will survive the termination or expiration of this contract.
- 10.1.2. Town Data is and will remain the sole and exclusive property of the Town, and all right, title, and interest in that data is reserved by the Town.
- 10.1.3. This section 10.1 will survive the termination or expiration of this contract.

10.2. Service Provider's use of Town Data

- 10.2.1. The Service Provider is hereby granted a limited license to the Town Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display Town Data only to the extent necessary in providing the Services.
- 10.2.2. The Service Provider shall keep and maintain Town Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations under this contract and applicable law to avoid unauthorized access, use, disclosure, or loss of the Town Data.
- 10.2.3. The Service Provider Shall use and disclose Town Data solely and exclusively for the purpose of providing the Services, with that use and disclosure being in accordance with this contract and applicable law.
- 10.2.4. The Service Provider shall not, without the Town's prior written permission, use, sell, rent, transfer, distribute, or otherwise disclose or make available Town Data or the Service Provider's own purposes or for the benefit of anyone other than the Town.
- 10.2.5. This section will survive the termination and expiration of this contract.

10.3. Extraction of Town Data

The Service Provider shall, within three business days of the Town's request, provide the Town an extract of the Town Data in the format specified by the Town. This extract must be provided without charge and without any condition or contingency, including the payment of any fees due to the Service Provider.

10.4. Backup and recovery of Town Data

- 10.4.1. The Service Provider shall, as part of the Services, maintain a backup of Town Data and shall provide an orderly and timely recovery of that data if the Services are interrupted.
- 10.4.2. Unless otherwise described in Exhibit 1, the Service Provider shall maintain a contemporaneous backup of Town Data that can be recovered within two hours at any point in time.
- 10.4.3. The Service Provider shall store a backup of Town Data in an off-site "hardened" facility no less than daily, maintaining the security of the Town Data.
- 10.4.4. Any backups of Town Data will not be considered in calculating storage used by the Town.

10.5. Breach of Town Data

- 10.5.1. If any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Town Data or the physical, technical, administrative, or organizational safeguards put in place by the Service Provider that relate to the protection of the security, confidentiality, or integrity of Town Data (collectively a "**Breach**"), then the Service Provider shall do all of the following:
 - 10.5.1.1. Notify the Town as soon as practicable, but no later than 24 hours after becoming aware of the Breach.
 - 10.5.1.2. Cooperate with the Town in investigating the Breach, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the Town.
 - 10.5.1.3. If the Breach involves PII, then at the Town's sole election: (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law or, in the absence of any legally required notification period, within five calendar days after the Breach; or (ii) reimburse the Town for any costs in notifying the affected individuals.

- 10.5.1.4. If the Breach involves PII, then provide third-party credit and identity monitoring services to each of the affected individual who comprise the PII for the period required to comply with local law or, in the absence of any legally required monitoring services, for at least 12 months following the date of notification to those individuals.
 - 10.5.1.5. Perform or take any other action required to comply with applicable law as a result of the Breach.
 - 10.5.1.6. Indemnify and defend the Town, in accordance with the procedures set forth in section 14 for any Claim arising from the Breach.
 - 10.5.1.7. Recreate any lost Town Data in the manner and on the schedule set by the Town without charge to the Town.
 - 10.5.1.8. Provide the Town with a detailed plan within 10 calendar days after the Breach describing the measures that the Service Provider will undertake to prevent a future Breach.
- 10.5.2. Notification to affected individuals under section 10.5.1 must comply with applicable law, be written in plain language, and contain, at a minimum, all of the following: (i) the name and contact information of the Service Provider’s representative; (ii) a description of the nature of the Breach; (iii) a list of the types of data involved; the known or approximate date of the Breach; (iv) a description as to how the Breach may affect the affected individual; (v) a description of the steps that the Service Provider has taken to protect the affected individual; (vi) a description of the steps that the affected individual can take to protect him or herself; (vii) contact information for major credit card purporting agencies; and (viii) information regarding the credit and identity monitoring services to be provided by the Service Provider.
- 10.5.3. This section 10.5 will survive the termination or expiration of this contract.

11. Confidential Information

11.1. Confidential Information defined.

- 11.1.1. **“Confidential Information”** means all of the following:
 - 11.1.1.1. Town Data
 - 11.1.1.2. All information and documentation of a party that: (i) the disclosing party has marked “confidential” or with words of similar meaning at the time of disclosure; (ii) if disclosed orally or not marked “confidential” or with words of similar meaning was subsequently summarized in writing by the disclosing party and marked as “confidential” or with words of similar

meaning; and (iii) should reasonably be recognized as confidential information of the disclosing party.

- 11.1.2. Confidential Information does not include any information or documentation that was (i) already in the possession of the receiving party without an obligation of confidentiality; (ii) developed independently by the receiving party without violating the disclosing party's proprietary rights; (iii) obtained from a source other than the disclosing party without an obligation of confidentiality; or (iv) publicly available when received or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of , the receiving party). Confidential Information does not include this contract or any document incorporated into this contract.

11.2. Confidentiality obligation

- 11.2.1. Each party shall hold all Confidential Information in strict confidence and shall not copy, reproduce, sell, transfer, or otherwise dispose of, give, or disclose that Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this contract or. Each party shall not use the Confidential Information for any purposes other than the performance of this contract.
- 11.2.2. Each party shall advise and require its respective employees, agents, and subcontracts of their obligations to keep Confidential Information confidential.

11.3. Compliance with applicable laws

- 11.3.1. The parties acknowledge that, as an Illinois unit of local government, the Town is obligated to make certain disclosures under the state's Freedom of Information Act (5 ILCS 140/).

11.4. Cooperation to prevent disclosure of Confidential Information

- 11.4.1. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information.
- 11.4.2. Without limiting section 11.4.1, if either party has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of the contract, then that party shall advise the other party immediately of that fact and shall cooperate with that other party in seeking any injunctive or other equitable relief against that person.

12. Data Privacy and Information Security

12.1. Undertaking by Service Provider

12.1.1. Without limiting the Service Provider’s obligation of confidentiality under this contract, the Service Provider shall establish and maintain a data privacy and information security program (“**Security Program**”), which includes physical, technical, administrative , and organizational safeguards and that is designed to:

12.1.1.1. Ensure the security and confidentiality of Town Data.

12.1.1.2. Protect against any anticipated threats or hazards to the security or integrity of the Town Data.

12.1.1.3. Protect against unauthorized disclosure, access to, or use of the Town Data.

12.1.1.4. Ensure that all employees, agents, and subcontractors of the Service Provider comply with these security requirements.

12.1.2. The Security Program may not be less stringent than the safeguards used by the Town.

12.2. Audit by Service Provider

No less than annually, the Service Provider shall conduct a comprehensive independent third-party audit of its Security Program and shall provide the audit findings to the Town.

12.3. Right of Audit by Town

12.3.1. Without limiting any other audits rights of the Town, The Town may review the Service Provider’s Security Program prior to the commencement of Services and from time to time during the term of this contract.

12.3.2. The Town, from time to time and at its own expense, may perform or have performed, an on-site audit of the Service Providers Security Program.

12.3.3. In lieu of an on-site audit, upon request by the Town, the Service Provider shall complete, within 45 days after the Town’s request, an audit questionnaire provided by the Town regarding the Security Program.

12.4. Audit findings

The Service Provider shall implement any required safeguards as identified by the Town or by any audit of the Security Program.

12.5. Town’s right to terminate for deficiencies

The Town may immediately terminate this contract without limitation and without liability if the Town reasonably determines that the Service Provider has failed to meets its obligations under this section 12.

13. Proprietary Rights

13.1. Pre-existing materials

- 13.1.1. The Town acknowledges that, in the course of performing the Services, the Service Provider may use software and related processes, instructions, methods, and techniques that the Service Provider has previously developed (collectively, “**Pre-existing Materials**”).
- 13.1.2. The Pre-existing Materials will remain the sold and exclusive property of the Service Provider.

13.2. No license.

- 13.2.1. Except as expressly set forth in this contract, no license is granted by either party to the other with respect to the Confidential Information or Pre-Existing Materials.
- 13.2.2. Nothing in this contract will be construed to grant to either party any ownership or other interest in the Confidential Information or Pre-Existing Materials, except as may be provided under a license specifically applicable to that Confidential Information or Pre-Existing Materials.

13.3. Survival of provisions

The provisions of this section 13 will survive the termination of this contract.

14. Indemnification; Limitation of Liability; Insurance

14.1. Indemnification

- 14.1.1. With respect to any Proceeding brought by someone other than the Service Provider or someone other than one or more Town Indemnitees against one or more Town Indemnitees and that arise out of this contract or the Service Provider’s provision of the Services (each, a “**Nonparty Claim**”), the Service Provider shall indemnify those Town Indemnitees against all Indemnifiable Losses arising out of that Proceeding.
- 14.1.2. To be entitled to indemnification under section 14.1.1, a Town Indemnitee subject to any Nonparty Claim must promptly (and in any event no later than 10 days after the Town Indemnitee first knew of that Nonparty Claim) notify the Service Provider of that Nonparty Claim and deliver to the Service Provider a copy of all legal pleadings with respect to the Nonparty Claim. If the Town Indemnitee fails to timely notify the Service Provider of a Nonparty Claim, then the Service Provider will be relieved of its indemnification obligations with respect to that Nonparty Claim to the extent that the Service Provider was prejudiced by that failure, and the Service Provider will not be required to reimburse the Town Indemnitee for any Litigation Expenses the Town Indemnitee incurred during the period in which the Town Indemnitee failed to notify the Service Provider. The notification of one Town Indemnitee will serve as notification of all Town Indemnitees in that Nonparty Claim.

- 14.1.3. To assume the defense of a Nonparty Claim, the Service Provider must notify the Town Indemnitee that it is doing so. Promptly thereafter, The Service Provider shall retain to represent it in the Nonparty Claim independent legal counsel that is reasonably acceptable to the Town Indemnitee.
- 14.1.4. A Town Indemnitee is entitled to participate in the defense of a Nonparty Claim. A Town Indemnitee may defend a Nonparty Claim with counsel of its own choosing and without the Service Provider participating if any or all of the following occur: (1) the Service Provider notifies the Town Indemnitee that it does not wish to defend the Nonparty Claim; (2) by midnight at the end of the tenth day after the Town Indemnitee notifies the Service Provider of the Nonparty Claim, the Service Provider fails to notify the Town Indemnitee that it wishes to defend the Nonparty Claim; or (3) representation of the Service Provider and the Town Indemnitee by the same counsel would, in the opinion of that counsel, constitute a conflict of interest.
- 14.1.5. The Service Provider shall pay any Litigation Expenses that a Town Indemnitee incurs in connection with the defense of the Nonparty Claim before the Service Provider assumes the defense of that Nonparty Claim, except with respect to any period during which the Town Indemnitee fails to timely notify the Service Provider of that Nonparty Claim. The Service Provider will not be liable for any Litigation Expenses that a Town Indemnitee incurs in connection with defense of a Nonparty Claim after the Service Provider assumes the defense of that Nonparty Claim, other than Litigation Expenses that the Town Indemnitee incurs in employing counsel in accordance with section 14.1.4, which Litigation Expenses the Service Provider shall pay promptly as they are incurred.
- 14.1.6. After the Service Provider assumes the defense of a Nonparty Claim, the Service Provider may contest, pay, or settle the Nonparty Claim without the consent of the Town Indemnitee only if that settlement (1) does not entail any admission on the part of the Town Indemnitee that it violated any law or infringed the rights of any person, (2) has no effect on any other claim against the Town Indemnitee, (3) provides as the claimant's sole relief monetary damages that are paid in full by the Service Provider, and (4) requires that the claimant release the Town Indemnitee from all liability alleged in the Nonparty Claim.
- 14.1.7. As used in this contract:

"Indemnifiable Losses" means the aggregate of Losses and Litigation Expenses.

"Litigation Expense" means any out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys' fees and other professionals' fees and disbursements.

“**Loss**” means any amount awarded in, or paid in settlement of, any Proceeding, including any interest but excluding Litigation Expenses.

“**Proceeding**” means any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding.

“**Representative**” means any officer, employee, agent, consultant, advisor, and any other representative of the Town of Normal.

“**Town Indemnitee**” means the Town of Normal, each Representative of the Town, and each of the heirs, executors, successors, and assignees of any of the foregoing.

14.1.8. This section 14.1 will survive the termination or expiration of this contract.

14.2. Additional remedies for proprietary-rights violations

14.2.1. In addition to the indemnification obligation under section 14.1, if (i) the Service Provider is enjoined from providing the Services based upon a claim of a infringement or misappropriation of any IP Right and that injunction is not dissolved within 30 calendar days or if (ii) the Town is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any IP Right in the access or use of the Services, then the Service Provider shall, at it expense:

14.2.1.1. Obtain for the Town the right to continue using the Services;

14.2.1.2. Replace or modify the Services so that they do not infringe upon or misappropriate the IP Right and are free to be used by the Town; or

14.2.1.3. If the Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the actions under section 14.2.1.1 or section 14.2.1.2, then the Service Provider shall reimburse to the Town any prepaid fees and the full cost associated with any Transition Services.

14.2.2. For the purpose of this section, “**IP Right**” means any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right.

14.3. Third-party beneficiaries

14.3.1. For the purposes of this section 14, the Town Indemnitees are third-party beneficiaries of this contract in accordance with its terms. Any action or consent taken by the Town on its own behalf is binding upon the Town Indemnitees for the purpose of this section 14.3.

14.3.2. Other than as set forth in section 14.3.1, this contract is for the sole benefit of the signatories and their permitted successors and assigns. Nothing express or implied in

this contract is intended to create or be construed to create any right of enforcement in any persons or entities who are neither a signatory to this contract nor a Town Indemnitee.

14.4. Insurance

- 14.4.1. During the term of this contract, the Service Provider shall, at all times and at its own cost, maintain insurance in the type and minimum amounts as follows:
 - 14.4.1.1. General liability: at least \$1 million per occurrence and \$2 million aggregate, exclusive of defense costs.
 - 14.4.1.2. Excess liability: \$2 million per occurrence and \$2 million aggregate, exclusive of defense costs.
 - 14.4.1.3. Professional liability: \$1 million per occurrence and \$1 million aggregate, exclusive of defense costs.
 - 14.4.1.4. Workers compensation at applicable statutory limits.
 - 14.4.1.5. Employers liability: \$500,000 per occurrence.
- 14.4.2. All policies, except policies for professional liability, must be written on an occurrence basis. All policies must be written with insurance carriers who are qualified to do business in the State of Illinois and who are rated A-VII or better in the latest Best's Key Rating Guide. All policies must be written on the most current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) form or a manuscript form if coverage is broader than the ISO or NCCI form.
- 14.4.3. The Town of Normal and its officers and employees must be named as an additional insured party on general liability and excess liability policies. The Town's interest as an additional insured party must be on a primary and non-contributory basis on all policies and be noted as such on the insurance certificates.
- 14.4.4. The Service Provider shall cause the liability it assumed under this contract to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies must be primary without right of contribution from any insurance by the Town.
- 14.4.5. The Town may require an adjustment of the limits of liability for commercial general liability and professional liability insurance as Service Provider's exposure to the Town increases.
- 14.4.6. Upon demand, the Service Provider must provide the Town with a copy of each insurance policy maintained under section 14.4.1. In addition, the Service Provider must provide the Town with certificates of insurance showing evidence that the

insurance policies required under section 14.4.1 are in full force and effect and giving the Town at least 30 days' notice prior to any change, cancellation, or non-renewal except in the case of cancellation for non-payment of premium, in which case the notice must be made 10 days before the cancellation. Any renewal certificate of insurance must be automatically provided to the Town at least 30 days prior to the policy expiration. If a self-insured retention or a deductible is maintained on any of the policies, then the amount of the retention or deductible is subject to approval by the Town. The Service Provider represents that there is no conflict in coverage as disclosed between any certificate of insurance submitted to the Town and the insurance policy.

14.5. Limitation of liability

- 14.5.1. NEITHER PARTY WILL BE LIABLE FOR AN INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT. A PARTY WILL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT. THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS ACTS OR OMISSIONS UNDER THIS CONTRACT WILL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS CONTRACT
- 14.5.2. THE LIMITATION ON LIABILITY SET FORTH IN SECTION 14.5.1, WILL NOT APPLY TO ANY OF THE FOLLOWING:
 - 14.5.2.1. A PARTY'S OBLIGATIONS OF INDEMNIFICATION AND DEFENSE UNDER THIS CONTRACT
 - 14.5.2.2. DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
 - 14.5.2.3. A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY UNDER THIS CONTRACT
- 14.5.3. NO OFFICER, OFFICIAL, EMPLOYEE, OR AGENT OF THE TOWN WILL BE PERSONALLY LIABLE TO THE SERVICE PROVIDER FOR ANY OBLIGATION UNDER THE TERMS OF THIS CONTACT
- 14.5.4. This section 14.5 will survive the termination or expiration of this contract.

15. General Provisions

15.1. Drafting conventions

- 15.1.1. The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."
- 15.1.2. The headings in this contract are provided for convenience only and do not affect its meaning.
- 15.1.3. Any reference to a contract means that contract as amended or supplemented, subject to any restrictions on amendment contained in that contract.

- 15.1.4. Unless specified otherwise, any reference to a statute, ordinance, or regulation means that statute, ordinance, or regulation as amended or supplemented from time to time and any corresponding provisions of successor statutes, ordinances, or regulations.
- 15.1.5. All references to a time of day are references to the time in Normal, Illinois.
- 15.1.6. The words “party” and “parties” refer only to a party to this contract named in the introductory clause.
- 15.1.7. Each party has participated in negotiating and drafting this contract, so if any ambiguity or a question of intent or interpretation arises, this contract is to be construed as if the parties had drafted it jointly, as opposed to being constructed against a party because it was responsible for drafting one or more provisions of this contract.

15.2. Relationship between the parties

- 15.2.1. The Service Provider represents and warrants that it is an independent contractor with no authority to contract for the Town or in any way to bind or commit the Town to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the Town.
- 15.2.2. The Service Provider shall not hold itself out as and will not be considered to be an agent employee, joint venture, or partner of the Town.
- 15.2.3. In recognition of the Service Provider’s status as an independent contractor, the Town will carry no workers’ compensation insurance or any health or accident insurance to cover the Service Provider or its agents or staff. The Town will not pay any contributions to Social security, unemployment insurance, federal or state withholding taxes, or any other applicable taxes nor provide any other contributions or benefits that might be expected in an employer-employee relationship. Neither the Service Provider nor its staff will be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of the Town.

15.3. Force Majeure

- 15.3.1. Neither the Town nor the Service Provider will be considered to be in default of this contract if delays in or failure of performance is due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. **“Uncontrollable Forces”** means any event that results in the prevention or delay of performance by a party of its obligations under this contract and that is beyond the reasonable control of the nonperforming party. It includes flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. It does not include labor disturbances or material shortages.

- 15.3.2. Neither party will, however, be excused from performance if nonperformance is due to forces that are preventable, removable, or remediable and that the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.
- 15.3.3. The nonperforming party will, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this contract.

15.4. Choice of law; jurisdiction

- 15.4.1. This contract will be governed by and construed in accordance with the laws of the State of Illinois.
- 15.4.2. Any litigation filed by the Service Provider or the Town against the other party and involving this contract must be filed and litigated in the Circuit Court of McLean County, Illinois.

15.5. Compliance with laws; Town policies and procedures

- 15.5.1. Both parties shall comply with all applicable federal, state, and local laws.
- 15.5.2. The Service Provider shall comply with all applicable Town policies and procedures that are posted, conveyed, or otherwise made available to the Service Provider.

15.6. Cooperation

- 15.6.1. Where agreement, approval, acceptance, consent, or a similar action by either party is required by any provision of this contract, that action may not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptance in order that each party may properly accomplish its obligations and responsibilities under this contract.
- 15.6.2. The Service Provider shall cooperate with any Town supplier performing services and all parties supplying hardware, software, communication services and other services and products to the Town, including the successor service provider. The Service Provider shall not commit or permit any act that may interfere with the performance of services by any supplier to the Town.

15.7. Advertising and publicity

The Service Provider may not refer to the Town directly or indirectly in any advertisement, news release, or publication without the Town's prior written approval.

15.8. Waivers

- 15.8.1. The parties may waive any provision in this contract only by a writing executed by the party against whom the waiver is sought to be enforced.
- 15.8.2. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this contract, operates as a waiver of any right, remedy, or condition.
- 15.8.3. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver, once given, is not to be construed as a waiver on any future occasion or against any other person.

15.9. Amendments

This contract may be amended only by a written agreement of the Town and the Service Provider that identifies itself as an amendment to this contract. Any amendment may be subject to the approval of the Town council in accordance with the Town's Procurement Policy Manual.

15.10. Cumulative remedies

All rights and remedies under this contract will be in addition to all other rights and remedies available at law or in equity.

15.11. Authorized representative

- 15.11.1. From time to time, the Service Provider shall designate an authorized representative who is responsible for communicating with the Town on behalf of Service Provider and who, unless applicable laws require action by the board of directors, members, or manager of Service Provider, has the authority to make or grant requests, demands, approvals, consents, agreements, and other action required or described in this contract for and on behalf of Service Provider.
- 15.11.2. The City Manager shall, from time to time, designate an authorized representative who is responsible for communicating with the Service Provider on behalf of the Town. The City Manager, or his or her designee, has the authority to make or grant requests, demands, approvals, consents, agreements, and other action required or described in this contract for and on behalf of the Town. Any amendment may be subject to the approval of the Town council in accordance with the Town's Procurement Policy Manual.

15.12. Notices

All notices, demands, requests, consents, approvals or other instruments required or permitted by this contract must be in writing and must be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, by overnight courier, or by electronic mail, or as of the third day from and including the date of posting, if mailed by registered or certified mail, return receipt

requested, with postage prepaid, addressed to the addresses appearing at the end of this contract or as otherwise instructed by a party in writing.

15.13. Assignment

- 15.13.1. This contract and the obligations of the Service Provider under this contract are personal to the Service Provider and its staff. Neither the Service Provider nor any successor, receiver, or assignee of the Service Provider may directly or indirectly assign this contract or the rights or duties created by the contract, whether that assignment is effected in connection with a sale of the Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise, without the Town's prior written consent.
- 15.13.2. In the case of an assignment by the Service Provider, the Service Provider represents that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services.
- 15.13.3. The Town will not assign its rights and obligations under this contract without the Service Provider's prior written consent.

15.14. Final agreement

This contract constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this contract. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this contract are expressly merged into and superseded by this contract. The provisions of this contract may not be explained, supplemented, or qualified through evidence of prior trade usage or a prior course of dealing. In entering into this contract, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this contract. There are no conditions precedent to the effectiveness of this contract other than those expressly stated in this contract.

15.15. Counterparts

This contract may be executed in two or more counterparts, each of which together will be deemed an original, but all of which, together, constitute the same instrument. If any signature is delivered by facsimile or by email of a ".pdf" format data file, then that signature creates a valid and binding obligation of that party with the same force and effect as if the facsimile or ".pdf" signature page were an original.

Signature Page

The Parties are signing this contract as of the date set forth in the introductory clause.

CONSULTANT GROUP, INC.

By: _____
[Name]
[Title]

Address for notification:

TOWN OF NORMAL

By: _____
Christopher Koos, President
Board of Trustees of the Town of Normal

Approved as to form:

By: _____
Brian Day, Corporation Counsel

Approved by Resolution No. _____

Address for notification:

