

**TCM Contract # 2021-7****Professional Services Statement of Work**

Client Name:	The University of North Texas System
Quote #:	Q-207591
OMNIA Partners CPN #:	TX-R161801-309481
Project Name:	VFA Core Training & Site Setup

**Preamble**

This Statement of Work ("SOW" and "Statement of Work"), issued on 04/12/2021 ("Issue Date"), incorporates by reference and is governed by the terms and conditions of Agreement ("Agreement") attached between the University of North Texas System ("Client") and VFA, Inc ("VFA") and is effective as of May 3, 2021 ("Statement of Work Effective Date"). When in conflict, the terms of this SOW shall supersede those of the Agreement solely in relation to the Project listed below.

**Term Information****Term of Offer**

VFA reserves the right to reject this Statement of Work if it is not signed and returned to VFA, sent to Christopher Nabers ([cnabers@accruent.com](mailto:cnabers@accruent.com)), by May 28, 2021.

**Term of Service**

Professional Services ordered hereunder will be available to Client for 365 days from Statement of Work Effective Date. After such date, any unused portion of the Services defined will be forfeited, unless otherwise agreed to by both parties (however the obligation for payment shall remain). No forfeiture will occur, as long as the parties are diligently working to completion.

Services shall not be scheduled or started pursuant to this SOW, if Client has an Accounts Receivable balance with VFA that is more than thirty (30) days delinquent.

Addendum attached hereto and incorporated herein for all purposes.

**Client Contact Information****Client SOW Contact**

Name: [REDACTED]

Email: [teresa.rogers@untsystem.edu](mailto:teresa.rogers@untsystem.edu)

Phone: [REDACTED]



## Client Billing Information

All Invoices will be sent to the Billing Contact on file, unless information is otherwise provided.

## Service Fees

### Fixed Fee Services

Service Description	One Time Fee
New VFA Site Setup	\$1,740
VFA.facility Core Training	\$8,919
<b>TOTAL:</b>	<b>\$10,659</b>

Above pricing includes 13% OMNIA Discount. See detailed Scope of Work for more information

## Payment Summary

### Milestone Billing

Training and Professional Services Billing Milestones				
#	% of Fee	Amount	Description	Timing
1	100%	\$1,740	New VFA Site Setup	On SOW Signing
2	100%	\$8,919	VFA.facility Core Training	On SOW Signing
Total	100%	\$10,659		

## Service Fee Terms

### GENERAL

- 1.1 Above fees include reasonable and customary expenses, unless otherwise noted in the Scope of Work details (see below)
- 1.2 All fees exclude applicable taxes.

### PAYMENT TERMS

- 2.1 Invoicing: Charges for this SOW will be invoiced according to the terms below. Payment will be due within 30 days of invoice date.
- 2.2 Milestone Billing: VFA will invoice per the Milestone Billing table displayed above in the Payment Summary section.



## Acknowledged and Agreed by the Duly Authorized Representatives of the Parties

Client: University of North Texas System

VFA, Inc.

Date: 5/4/2021

Effective Date: 5/4/2021

PO Required? Yes ☒ No ☐  
If Yes, PO must be provided. 10076

Tax exempt? Yes ☒ No ☐  
If Yes, Tax Exemption Certificate must be provided.

## Terms and Conditions

### Defined Terms

- 1.1 "Change Control" is defined as the process by which requests for changes in deliverables, responsibilities, resources or Project Schedule are properly recorded, evaluated, distributed and incorporated into the SOW. Change Control process will be defined by Client and VFA as part of project planning.
- 1.2 "Change Order" is defined as a document which captures any and all alterations to this SOW with regard to changes in deliverables, responsibilities, resources, Term Information or Services Fees.
- 1.3 "Notification Period" is defined as the period of time in which the Client must notify VFA of material nonconformance with services provided herein.

### Client Responsibilities

- 2.1 Client acknowledges that its participation and cooperation is both required and critical for the success of the Project. Deviations from these responsibilities may lead to commensurate changes in the timeline and fees:
- 2.2 VFA utilizes the Zoom platform for teleconferencing. Clients must be able to access Zoom and to download any necessary supporting software.
- 2.3 Participants in Zoom must have computers with internet access.
- 2.4 Client shall provide a Project Manager who will be responsible for the coordination of the client's resources as necessary for the Project. The Client acknowledges that the Project Manager has the ability to plan and commit resources (human and otherwise) on behalf of the Client that are necessary to execute the Project.
- 2.5 Ensure appropriate levels of Client executive and Client project team resources will be made available to the VFA project team to ensure successful completion of tasks by jointly developed timelines. If certain areas are identified as more complex than initially identified, additional Client or VFA resources may be requested to supplement the team in order to ensure timely delivery, which would be addressed separately under the Change Control procedures described in this SOW.
- 2.6 Further, Client acknowledges that its timely provision of and access to offices accommodations; skilled personnel; facilities; equipment; assistance; cooperation; complete and accurate information and data from its officers, agents, and employees; and suitably configured computer products (collectively, "Cooperation") are essential to performance of any Services as set forth in this SOW. VFA shall not be responsible from Client's failure to provide full Cooperation. Client agrees to allow VFA to post, at a site at which Services are performed, any documents necessary for VFA to provide Services in compliance with the law.

### Changes to Scope and/or Schedule

- 3.1 If at any time either party does not meet deadlines outlined within the agreed upon project schedule, Client and VFA both agree and acknowledge the following may occur:



- a. Project Schedule will be revised to accommodate any delays, and a new, mutually agreed upon schedule will be drafted by the VFA Project Manager and signed by appropriate Client and VFA representatives:
  - b. If delays are extensive, project resources will be reallocated to other engagements.
  - c. Fees for additional work or extension of resources may be incurred
- 3.2 During the course of the Project, if VFA determines or could reasonably determine any Client actions or direction constitute a requirement to perform additional work, not otherwise specified herein, VFA shall notify Client within 30 days that Client has requested VFA to perform additional work.
- 3.3 VFA agrees and acknowledges that it waives the right to request reimbursement for work already performed if VFA fails to notify Client within 30 days of determining or reasonably being able to determine that Client actions or direction constituted a requirement to perform additional work.
- 3.4 VFA will complete a Change Order containing the changes to the Project, Project Schedule, deliverables and/or Services Fees contained in this SOW. Client may request up to 10 Business Days to determine whether to execute the Change Order. After the 10 Business Days, the terms of the Change Order may be subject to change depending upon availability of resources, impact to Project Schedule or severity of impact on existing activities.

## Assumptions

In addition, this SOW is based upon the following assumptions:

- 4.1 Product enhancements are not part of this SOW and considered out of scope.
- 4.2 VFA resources are not dedicated solely to the Client during the engagement. Reasonable notice is required by the Client to request VFA resources whether work is performed on-site or off-site.
- 4.3 Client will be required to provide VFA with a minimum of 10 business days prior notice ("Resource Request Notification Period") of Client's requested services date for allocation of VFA consultant resources and provision of Services ("Requested Dates"). While VFA will use commercially reasonable efforts to allocate resources in accordance with Requested Dates, VFA shall be under no obligation or penalty to meet such Requested Dates and shall be entitled to reject or offer alternatives to Client for any reason.
- 4.4 Once Client and VFA agree on a Project plan that identifies specific dates when VFA and Client will perform the work described herein, Client will pay for 50% of the costs associated with any change in VFA's resource scheduling tied to a change in the Project schedule or VFA staffing plan introduced by Client. Any such fee will be over and above the fees provided within this SOW.
- 4.5 Should the Client (or Participant) cancel any training session or on-site engagement with VFA Consultant(s) more than five (5) business days but less than ten (10) business days prior to the date that such engagement was scheduled to commence, the Client shall pay VFA a cancellation fee of fifty percent (50%) of the training session or on-site engagement fees. Should the Client (or Participant) cancel a training session or on-site engagement five (5) days (or less) prior to the date that such engagement was scheduled to commence, the Client shall pay VFA a cancellation fee of one hundred percent (100%) of the training session or on-site engagement fees. Any such fee will be over and above the fees provided within this SOW.
- 4.6 In the event Client cancels or reschedules any on-site engagement with VFA Consultant(s) with less than 15 business days lead time but more than 10 business days, VFA will invoice Client and Client will pay for 50% of the cancellation and/or change fees associated with rebooking travel and arrangement. In the event Client cancels or reschedules any VFA resource(s) with less than 10 business days lead time, VFA will invoice Client and Client will pay for 100% of the associated fee.
- 4.7 In the event VFA cancels or reschedules any on-site engagements with the Client 100% of the cancellation and/or change fees associated with rebooking travel and arrangements will be absorbed by VFA.

## Project Close

The Notification Period prior to the closure of the project is 10 Business Days from the date that VFA provides written notice to Client that states the delivery of Services is complete. In the event Client does not provide notice of material non-conformance or request for change during Notification Period, the project will be closed, and no additional work will be performed by VFA pursuant to the Services contained herein. In the event Client does provide notice of material non-conformance or request for change after the expiration of Notification Period, such work shall only be performed under a new contractual arrangement. In the event material non-conformance is identified within the Notification Period, VFA shall promptly correct such non-conformance, which was due to fault or negligence of VFA, at no additional cost to Client



## Scope of Work – New VFA Site Setup

### Project Overview and Deliverables

In order for a new VFA site to be created and set up for the client to use, there are several tasks that need to be accomplished. This scope includes the following tasks that will be completed by VFA's services team:

- VFA.facility Site Creation
- VFA.facility Site Configuration
- User Account Creation & Permissions Set Up
- VFA.auditor - Basic Survey Creation and Template Set Up

### Project Review

Once the above work has been completed, VFA will notify the client via email and the client will have 10 business days to review and provide feedback regarding any requested modifications.

### Project Close

Upon the completion of the review period, VFA will provide written notice to the Client that states the delivery of Services is complete.



## VFA.facility Core Training

VFA.facility Core Training enables customers to maximize the benefits of VFA's facility management solutions. VFA.facility training is intended to enable users to become proficient in using and manipulating the Facility Condition Assessment (FCA) data housed within the VFA.facility software. The Training Team will work with the client to schedule an onsite training class (or classes), to be held at a client-hosted location, for up to 10 students per session. Alternately, in cases where a travel restriction may be in place, the VFA.facility Core Training class may be delivered remotely via the web, and would include four, 3-hour web-based training sessions, to be scheduled on mutually agreed upon days and times.

The VFA.facility Core Training class consists of a two-day training session comprised of lecture, demonstrations, and hands-on student exercises. Students will be taught how they can manipulate and utilize the database information, as well as how VFA.facility may serve as a dynamic tool for planning, budgeting, and project prioritization.

The first day of class focuses on the Asset database and general navigation of the VFA.facility software. The VFA Product Trainer will demonstrate how the database is structured and how the assessment data is populated and updated within the VFA.facility Asset database. This session will focus on understanding the different types of information gathered during a Facility Condition Assessment, how that information is classified, as well as an overview of maintaining and updating your Asset database records. The session also explores the various benchmarks and metrics and explains how they are calculated (Replacement Value, Renewal Costs, the Facility Condition Index (FCI) and the Requirements Index (RI)).

The second day of the class focuses on leveraging the Asset database information via Reporting and Data Analysis techniques; This session includes setting up and running basic Reports, interpreting the results of those Reports, creating and analyzing "what if" Funding scenarios, a demonstration of how to develop a Pairwise Ranking Strategy in order to prioritize your Requirements and create a Capital Budget, as well an introduction to Dashboards and VFA FacilityView.

Each of the students in the class will be provided with a VFA.facility Training Guide, which will be used during the class to guide the students through a variety of hands-on exercises. The students will also be provided with a training environment to be used during the class, which will be based upon either a generic training dataset, or a copy of the client's Facility Condition Assessment data (depending on the data available for effective demonstrations of the software features and functionality). This training environment will also be made available to the students for 30 days after the end of the training class so that the students can practice what they have learned during the class, using both the training environment and the VFA.facility Training Guide.



## VFA.facility Core Training Topics include:

### *Understanding the Asset Database*

- Summary of the Facility Condition Assessment (FCA) process
- Setting up your Computer and reviewing the Software features
- Basic Navigation and the Database Hierarchy
- Utilizing Productivity Tools - Sorting, Filtering, Column Layouts and Favorites
- Review of the Facility Condition Assessment Data Records
- Key Concepts - FCI and RI Calculations; Replacement and Renewal Costs
- Understanding the RSMeans-based Cost Estimates
- Overview of the Data Maintenance process

### *Capital Planning & Budgeting*

- Understanding Report Options and Selection Criteria
- Analyzing the Database via Reports
- Constructing Ad-Hoc Data Browser Queries and Basic Pivot Tables
- Creating and Analyzing What-if Funding Scenarios
- Developing a Ranking Strategy and creating a Capital Budget (demonstration)
- Using Dashboards and VFA FacilityView

## Prerequisites:

All participants should:

- Possess basic Internet and Microsoft Windows navigation skills
- Have previously used Microsoft Word and Excel or other similar programs
- Have a basic understanding of facility management concepts and topics
- Be familiar with cost estimating concepts. A background in cost-estimation is required for users wishing to build new RSMeans-based cost estimates.

## Client Responsibilities:

- For client-hosted training sessions, the client is responsible for providing a training room and PC's that meet the requirements outlined in our IT Setup Instructions.
- As of July 2020, clients must agree to adhere to VFA's COVID-19 Onsite Safety Guidelines in order to host a Training engagement at their site.



## Software Order Document

### Client Information

Addendum attached hereto and incorporated herein for all purposes.

Client Name:	UNT System Office	Client Contact Name:	[REDACTED]
Bill To:	UNT System Business Service Center 1112 Dallas Dr., Ste. 4000 Denton, TX 76205	Client Contact Email:	teresa.rogers@untsystem.edu
Ship To:	[REDACTED]	Client Contact Phone:	[REDACTED]
Billing Email:	invoices@untsystem.edu	OMNIA CPN #:	TX-R161801-309481

### Quote Information

Quote #:	Q-207423-1	Quote Expiration:	5/28/2021
Start Date:	5/01/2021	End Date:	4/30/2026
Invoice Frequency:	Annual		

### SaaS Information and Fees

Product Subscription Fees	Quantity / Metric	Year 1 Invoice Period Beginning [5-1-2021]	Year 2 Invoice Period Beginning [5-1-2022]	Year 3 Invoice Period Beginning [5-1-2023]	Year 4 Invoice Period Beginning [5-1-2024]	Year 5 Invoice Period Beginning [5-1-2025]	Total Fees Initial Term
VFA Capital Planner	814,718 Square Feet	5,316.03	5,475.52	5,639.78	5,808.97	5,983.24	USD 28,223.54
Bundle Includes: Homepage access with dashboards and favorites, Limited Configuration attributes, Extended Asset Management, Basic Reports, Funding Module, Extended Reporting, Budget Module, and Facility View.							
Total Committed Fees		USD 5,316.03	USD 5,475.52	USD 5,639.78	USD 5,808.97	USD 5,983.24	USD 28,223.54





### Additional Terms

- 1 VFA shall grant a license to access the SaaS Services for the non-cancelable period listed above ("Committed SaaS Term").
- 2 All fees shall be due and payable within thirty (30) days of the date of VFA's invoice. All fees listed exclude any applicable taxes.
- 3 The pricing and offer in this Order Document are provided in return for an executed Order Document received by Chris Nabers ([cnabers@accruent.com](mailto:cnabers@accruent.com)) by the Quote Expiration date listed above.
- 4 Use of the SaaS Service and this Order Document are subject to the terms and conditions of Agreement dated May 3, 2021, between UNT System Office and VFA, Inc.
- 5 Support Terms and Conditions are outlined in the VFA Customer Support Policy document and can be found using the URL provided below. <https://www.accruent.com/services-support/customer-support>
- 6 Overages - Any overages over the committed metric amount will be invoiced 30% over the average metric price of the current year's fees. Overages, if any, will be assessed and invoiced quarterly. Not charging for overages is not a waiver of those overages, VFA retains the right to retroactively true-up metric counts. Overages will continue to be invoiced until such time the committed metric amount is changed to reflect overages.

### Acknowledged and Agreed by the Duly Authorized Representatives of the Parties

Client: The University of North Texas System

VFA, Inc.

DocuSigned by:

DocuSigned by:

Date: 5/4/2021

Effective Date: 5/4/2021

PO Required? Yes ☐ No ☐ If Yes, PO must be provided.

Tax exempt? Yes ☐ No ☐  
If Yes, Tax Exemption Certificate must be provided.



Addendum attached hereto and incorporated herein for all purposes.

# Master Agreement

This MASTER AGREEMENT (this “**Agreement**”) is entered into between VFA, Inc, with its principal place of business at 99 Bedford Street, Boston, MA 02111 (“**VFA**”) and the University of North Texas System and all component institutions with its principal place of business at 1901 Main Street, Dallas, TX 75201 (“**Client**”). This Agreement is pursuant to OMNIA Partners Customer Proposal number TX-R161801-309481. The effective date of this Agreement is May 3, 2021 (“**Effective Date**”).

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

1. **DEFINITIONS.**
- 1.1. “**VFA Software**” is each VFA-developed and/or VFA-owned software product in machine readable object code (not source code) and any Updates, Upgrades, or revisions to such software.
- 1.2. “**Agreement**” includes this Master Agreement its exhibits, as well as any documents, amendments, order forms, statements of work (SOW), or other relevant documentation that is attached hereto and/or included by reference
- 1.3. “**Affiliate**” is an entity that is a subsidiary of or under common control of the applicable entity.
- 1.4. “**Authorized User(s)**” are (i) Client’s employees, and (ii) Client’s consultants, contractors, or agents, approved in writing by VFA (which will not be unreasonably withheld, conditioned, or delayed) it being understood that VFA may reasonably withhold approval for competitors of VFA.
- 1.5. “**Change of Control**” means (i) the sale of all or substantially all of its stock or assets of a party to another entity; (ii) any merger, consolidation, or acquisition of a party with an entity that is not an Affiliate; or (iii) any change in the ownership of more than 50% of the voting capital stock of a party in one or more related transactions.
- 1.6. “**Client Data**” is data, excluding Resultant Data (defined below), that Client provides, generates, transfers, or makes available to VFA under this Agreement.
- 1.7. “**Documentation**” is paperwork, manuals, or other types of instruction regarding use of the Software made available to Client by VFA in electronic format (or in print upon request), including but not limited to: user instructions, release notes, manuals, and help files.
- 1.8. “**Fees**” are any monetary amounts set forth in this Agreement to be paid to VFA by Client.
- 1.9. “**License Metrics**” are the limitations on the license for SaaS Services, based on usage and set out in an Order Document; License Metrics are measured by a certain term, including but not limited to number of leases, square footage, number of locations, or reports.
- 1.10. “**Malicious Code**” includes computer viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.
- 1.11. “**Maintenance**” is the collective support services for the Software, including but not limited to the provision of Updates for the Services ordered. Maintenance is subject to VFA’s Support and Maintenance Policy (as may be amended by VFA) in effect at the time the services are provided. For the avoidance of doubt, Maintenance expressly excludes Professional Services.
- 1.12. “**Order Document**” is a document or set of documents executed by the parties which describes order-specific information and incorporates by reference the terms of the Agreement. An Order Document may not be specifically called an Order Document; it can be referred to by another name, such as a statement of work.
- 1.13. “**Partner**” is a third-party vendor or subcontractor under an agreement with VFA to provide services in support of VFA’s SaaS Services and/or Software, as well as any other obligations under this Agreement.
- 1.14. “**Partner Software**” is software (in object code form), and any of its Updates, upgrades, or revisions, including Documentation, that is owned by a Partner and provided to Client by VFA on a pass-through, reseller, or original equipment manufacturer (OEM) basis.
- 1.15. “**Professional Services**” are services provided by VFA, or an authorized Partner, as set forth in the Agreement; these may include, but are not limited to data conversion, implementation, site planning, configuration, integration and deployment of the SaaS Services, training, project management, assessment services and other consulting services.
- 1.16. “**Resultant Data**” is aggregated and anonymized data and information, including Client Data and Usage Data, relating to Client’s use of the Services. Resultant Data is aggregated and anonymized so that no identifiable information is present and may be used by VFA, in any form, for any lawful purpose.
- 1.17. “**SaaS Services**” is the provision of the Software, hosted by VFA or its Partners and accessed via the internet, as a service and as set forth on an applicable Order Document.
- 1.18. “**Software**” includes both the VFA Software and any applicable Partner Software.
- 1.19. “**Support**” is a service in which VFA provides technical support for the services and is provided pursuant to VFA’s Support and Maintenance Policy available in the support portal (as may be amended by VFA) in effect at the time the services are provided. For the avoidance of doubt, Support expressly excludes Professional Services.



- 1.20. **"Upgrades"** are the new products or functionality for which VFA generally charges a separate fee.
- 1.21. **"Updates"** are the error corrections, modifications, or security or product enhancements which VFA makes generally available to its customers as part of the Maintenance.
2. **ORDER OF PRECEDENCE; ENTIRE AGREEMENT.** In the event of a conflict between this Agreement and any Order Document or document contemplated by this Agreement, this Agreement shall prevail, unless such document explicitly states that it supersedes this Agreement and is executed by both parties. This Agreement will supersede any terms of Client purchase orders, receipts, or other Order Document, and such terms shall have no effect. This Agreement, including any applicable Order Documents, cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other communication between the parties relating to its subject matter and constitutes the parties' entire agreement relating to its subject matter. No modification to the Agreement will be binding unless in writing and signed by an authorized representative of each party.
3. **INTELLECTUAL PROPERTY.** Except for rights expressly granted under this Agreement, nothing in this Agreement shall transfer any of either party's Intellectual Property rights to the other, and each party will retain an exclusive interest in and ownership of its Intellectual Property. "Intellectual Property" includes, without limitation, inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, software, source code, algorithms, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, general purpose consulting and software tools, utilities and routines, logic, coherence and methods of operation of systems, and training methodology and materials. VFA's Intellectual Property includes, but is not limited to, any work that VFA creates, acquires, or otherwise has rights in, including any works created pursuant to this Agreement, except for any portion of such works that consist of Client's Intellectual Property. Client Data will be considered Client's Intellectual Property, except for Resultant Data, which will not be considered a derivative of Client Data. VFA may, in connection with the performance of services hereunder, create, employ, provide, modify, acquire, or otherwise obtain rights in, and any and all intellectual property rights, recognized in any country or jurisdiction in the world, now or hereafter existing, whether or not perfected, filed, or recorded.
4. **FINANCIAL TERMS.**
  - 4.1. **Fees and Payment Terms.** Fees shall be specified in the applicable Order Document and, unless stated otherwise, are denominated and payable in United States Dollars (USD) and due within 30 days of the date of invoice. VFA is not responsible for any payment conditions that are not expressly stated in this Agreement or any applicable Order Document.
  - 4.2. **Overdue Charges.** In the event that any Fees due and owing to VFA are not received by the due date, then VFA may: (i) charge interest on any past due balances at the lesser of: (a) 1½% per month, or (b) the highest rate allowed by law, and (ii) be entitled to condition future purchases on shorter payment terms. Client acknowledges that, if it fails to provide a purchase order number when required for payment, or it delays payment by requesting payment conditions not set forth in the Agreement, VFA's right to pursue overdue charges will not be waived.
  - 4.3. **Suspension of Services.** In the event any Fees due and owing are 30 or more days overdue from the last day of the initial 30-day payment period, VFA may, after providing notice to Client, and without limiting any of its other rights and remedies: (i) suspend, terminate, or otherwise deny Client access to or use of, all or any part of the Services, and (ii) require full payment of the overdue amount, and any other amount due and owing, prior to additional or continued performance by VFA.
  - 4.4. **Taxes.** Unless expressly provided otherwise in this Agreement or any applicable Order Document, the prices in the Agreement do not include taxes. Client agrees to pay any taxes arising out of the Agreement, other than those based on VFA's net income. If Client is tax-exempt, Client agrees to provide VFA a copy of its tax-exempt certificate prior to execution of an Order Document. Client shall be responsible for any liability or expense incurred by VFA as a result of Client's failure or delay in paying taxes due.
  - 4.5. **Out-of-Pocket Expenses.** Unless otherwise noted within the Agreement, any reasonable direct out-of-pocket expenses incurred by VFA in its performance of Professional Services for Client will be invoiced in addition to any applicable Fees due and owing. These expenses typically include but are not limited to airfare, lodging, employee meals, and sales, use, or similar (VAT, GST) taxes associated with those expenses.
  - 4.6. **Compliance/Audit.** VFA may audit Client's use of the Services at any time during the Term and at termination. Client (i) acknowledges that the Software includes a License Metric management component that tracks Software usage, and (ii) agrees not to impede, disable, or otherwise undermine operation of such management component. Upon written request, Client shall make available to VFA any records that show Client's compliance with the terms of this Agreement. If such audit determines that Client's use of the Services exceed the usage permitted by the



Order Document ("**Overage**"), Client shall pay to VFA: (a) all amounts due for previous and continuing excess use, and (b) the costs resulting from such audit. Any Overages will be assessed and invoiced by VFA. If VFA fails to charge for Overages, such failure to charge is not a waiver of those Overages and VFA retains the right to charge for those Overages. Overages will continue to be invoiced until such time the permitted usage amount is changed to reflect Overages.

- 4.7. **Purchase Orders.** In the event that Client requires a Purchase Order in order to process the license or purchase of any VFA-provided services, both parties agree that those services may be suspended or delayed until VFA's receipt of the Purchase Order

## 5. CONFIDENTIALITY

- 5.1. **Defined.** One party ("**Disclosing Party**") may expose or provide to the other party ("**Receiving Party**") Disclosing Party's confidential and proprietary information, including but not limited to information designated as confidential in writing, or information which the Receiving Party should know is confidential and proprietary ("**Confidential Information**"). Confidential Information includes, but is not limited to: the terms and conditions (but not the existence) of the Agreement, all trade secrets, software, source code, object code, specifications, documentation, business plans, customer lists and customer-related information, financial information, proposals, budgets as well as results of testing and benchmarking of the Software or other services, product roadmap, data and other information of VFA and its licensors relating to or embodied in the Hardware, Software, or Documentation. Placement of a copyright notice on any portion of the Software will not be construed to mean that such portion has been published and will not diminish any claim that such portion contains VFA's Confidential Information. For the avoidance of doubt, VFA's Intellectual Property is Confidential Information.
- 5.2. **Non-Disclosure.** The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized dissemination and will use the same degree of care that it uses to protect its own confidential information, but in no event less than a reasonable amount of care. Neither party will use Confidential Information of the other party for purposes other than those necessary to directly further the purposes of the Agreement. Except as otherwise expressly permitted herein, the Receiving Party shall not disclose Disclosing Party's Confidential Information to any person or entity other than the Receiving Party's officers, employees, and consultants who (i) need access to such Confidential Information in order to effect the intent of this Agreement, and (ii) have entered into written confidentiality agreements, or are bound by professional responsibility obligations, which protect the Disclosing Party's Confidential Information sufficient to enable the Receiving Party to comply with its obligations of confidentiality under this Agreement.
- 5.3. **Exceptions.** Information shall not be considered Confidential Information to the extent, but only to the extent, that the Receiving Party can establish that such information (i) is or becomes generally known or available to the public through no fault of the Receiving Party; (ii) was in the Receiving Party's possession before receipt from the Disclosing Party; (iii) is lawfully obtained from a third party who is not under any confidentiality obligations and has the right to disclose; or (iv) has been independently developed by the Receiving Party without reference to Disclosing Party's Confidential Information.
- 5.4. **Compelled Disclosure.** Receiving Party may disclose Disclosing Party's Confidential Information if it is compelled by law to do so, provided that the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest such disclosure.
- 5.5. **Other Permitted Disclosures.** Notwithstanding the foregoing confidentiality obligations, a party may provide a copy of this Agreement to the following persons and/or entities, who are under obligations of confidentiality substantially similar to those set forth in this Agreement: potential acquirers, merger partners, lenders, and investors and to their employees, agents, attorneys, investment bankers, lenders, financial advisors, and auditors in connection with the due diligence review of such party. A party may also provide a copy of this Agreement to the party's outside accounting firm and legal advisors and in connection with any litigation or proceeding relating to this Agreement.



## 6. LIMITED RIGHTS AND OWNERSHIP

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

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

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

7. **PRIVACY.** Client represents and warrants that, before providing personal information to VFA or its agents, it will comply with any laws applicable to the disclosure of personal information, including providing notices to or obtaining consent from third parties to allow sharing of their personal information with VFA under the Agreement, as further set forth in Exhibit G. VFA will take reasonable measures to protect the security of such personal information transferred by Client to VFA. VFA is not a creator, user, or recipient of individually identifiable health information or of any other information that qualifies as "Protected Health Information" under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and therefore is not a "business associate" under HIPAA. Neither party to this Agreement contemplates or intends that VFA will be exposed to any Protected Health Information in connection with any of the services or goods to be provided hereunder.

## 8. CLIENT DATA.

8.1. **Client Data.** Client retains sole and exclusive ownership to any and all Client Data, and Client shall be responsible for the accuracy, quality, integrity and legality of Client Data and of the means by which it acquired Client Data.

8.2. **Copy of Client Data.** Upon termination of the applicable SaaS Service, Software, or applicable license (as set forth in an Exhibit), and no longer than 30 days following termination of the Agreement, Client may request in writing a copy of Client Data in a format mutually acceptable to the parties (**"Exported Copy"**). Provided Client is not in breach of any of its obligations under the Agreement, and upon Client's written request and payment of the applicable Fees (of which a then-current fee schedule will be provided upon request), VFA will provide such Exported Copy. For the avoidance of doubt, Client will have full access to its Client Data throughout the Term; the Exported Copy is applicable only when Client requests that VFA provide Client Data in a certain format. Client acknowledges and agrees that VFA shall have no obligation to maintain Client Data after 30 days from termination.

## 9. INDEMNIFICATION.

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





all reasonable information and assistance relating to the Claim and reasonably cooperates with VFA and its counsel. VFA has no obligation to the extent any Claim results from: (1) Partner Software, (2) the combination, operation, or use of the SaaS Services with software or data not provided or approved by VFA, or (3) Client's breach of this Agreement. If it is adjudicated that an infringement of the SaaS Services, by itself and used in accordance with the Agreement, infringes upon any third party intellectual property right, VFA shall, at its option: (i) procure for Client the right to continue using the SaaS Service; (ii) replace or modify the same so it becomes non-infringing; or (iii) terminate the affected SaaS Service and Client's rights thereto and provide Client a refund of the pre-paid but unused portion of the SaaS Service fees paid to VFA for the affected SaaS Service. THIS SECTION STATES VFA'S ENTIRE OBLIGATION TO CLIENT AND CLIENT'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT.

- 9.2. **Client Indemnification.** Client will indemnify, defend, or hold harmless VFA from any action, suit, or proceeding brought against VFA by a third party alleging that the Client Data, or Client's use of the SaaS Services in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party, and Client will indemnify VFA against all damages and costs finally awarded or those costs and damages agreed to in a monetary settlement of such action, which are attributable exclusively to such claim, provided that VFA: (i) provides prompt written notice of the claim to Client; (ii) gives Client sole control of the defense and settlement of the claim (provided that Client may not settle any claim unless it unconditionally releases VFA of all liability); and (iii) provides Client, at Client's expense, with all reasonable information and assistance relating to the claim and reasonably cooperates with Client and its counsel. THIS SECTION STATES CLIENT'S ENTIRE OBLIGATION TO VFA AND VFA'S SOLE REMEDY FOR ANY CLAIM FOR INDEMNIFICATION.

## 10. WARRANTIES.

- 10.1. **Warranties.** For 90 days following the acceptance of VFA Software, VFA warrants that (i) the VFA Software will perform materially in conformance with the applicable Documentation and this Agreement; and (ii) the functionality and security of the VFA Software will not materially decrease.
- 10.2. **Remedies.** If the services are not performed consistent with the warranty set out in Section 10.1(i) above, Client shall promptly notify VFA in writing of such claim. As Client's exclusive remedy for any claim under this warranty and provided that such claim is determined by VFA to be VFA's responsibility, VFA shall, within 30 days of its receipt of Client's written notice, (i) re-perform the affected services so that they are conforming; (ii) provide Client with a plan reasonably acceptable to Client for re-performing the affected services; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from VFA, then VFA or Client may terminate the affected service, and Client will be entitled to a refund of the pre-paid but unused portion of the fees paid for the affected service. The preceding warranty cure shall constitute VFA's entire liability and Client's exclusive remedy for breach of the warranty set forth herein. If Client elects not to terminate the applicable service, Client waives all rights for the applicable warranty cure set forth herein. If the SaaS Services are not performed consistent with the warranty set out in Sections 10.1(ii) above, Client shall be entitled to the remedies set out in Sections 12.2 (Termination) and 12.3 (Termination Refund or Payment Obligations).
- 10.3. **Exclusions.** VFA is not responsible for any claimed breach of any warranty set forth in section 10.1 caused by: (i) modifications made to the services by anyone other than VFA or its Partners; (ii) the combination, operation, or use of the services with any items not certified or approved by VFA; (iii) VFA's adherence to Client's specifications or instructions; (iv) errors caused by or related to internet connectivity, (v) Client deviating from the services operating procedures described in the Documentation, or (vi) Partner Software, which is pursuant to the original licensor's warranty, if any.
- 10.4. **Partner Software.** Client acknowledges that certain SaaS Services may contain Partner Software, and VFA may add and/or substitute functionally equivalent products for any Partner Software in the event of product unavailability, end-of-life, or changes to software requirements. VFA makes no warranty with respect to any Partner Software.
- 10.5. **Disclaimer.** EXCEPT AS SET FORTH ABOVE, VFA, ITS LICENSORS, AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, AND VFA, ITS LICENSORS, AND ITS SUPPLIERS EXPRESSLY DISCLAIM, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SAAS SERVICES ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION, OR THAT ALL ERRORS WILL BE CORRECTED; (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, (iii) ANY WARRANTY THAT CONTENT AND/OR PARTNER SOFTWARE WILL BE ACCURATE, RELIABLE, AND ERROR-FREE, AND (iv) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. NO ADVICE, GUIDANCE, STATEMENT, OR INFORMATION GIVEN BY VFA, ITS AFFILIATES, CONTRACTORS, OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN.
- 10.6. NOTHING CONTAINED IN THIS SECTION (WARRANTIES) SHALL AIM TO LIMIT ANY LIABILITY TO THE EXTENT PROHIBITED BY LAW.



## 11. LIMITATION OF LIABILITY

- 11.1. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THE AGREEMENT) TO THE OTHER FOR ANY CLAIM UNDER THIS AGREEMENT WILL BE LIMITED TO THE FEES PAID FOR THE PRIOR TWELVE (12) MONTHS FOR THE PRODUCT OR SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM. NOTWITHSTANDING THE FOREGOING, THE ABOVE LIMITATIONS SHALL NOT APPLY TO CLIENT'S OBLIGATIONS TO PAY VFA ANY AMOUNTS SET FORTH UNDER SECTION 4. FINANCIAL TERMS.
- 11.2. **Exclusion of Indirect and Consequential Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, TREBLE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), COST OF REPLACEMENT, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT A PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.3. **Time to Bring Action.** EXCEPT FOR NON-PAYMENT OF ANY FEES DUE TO VFA, NO CLAIM ARISING OUT OF THE AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN THE SHORTER OF: (i) ONE YEAR, OR (ii) THE MINIMUM PERIOD ALLOWED BY LAW AFTER THE CAUSE OF ACTION HAS OCCURRED.
- 11.4. **Damages Prohibited by Law.** NOTHING CONTAINED IN THIS SECTION SHALL AIM TO LIMIT ANY LIABILITY TO THE EXTENT PROHIBITED BY LAW.
- 11.5. **Survival.** THIS SECTION SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.

## 12. TERM AND TERMINATION

- 12.1. **Agreement Term.** The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the expiration or termination of all Order Documents, unless otherwise terminated earlier as provided hereunder.
- 12.2. **Termination.** Either party may terminate the Agreement, including all Order Documents, immediately upon written notice in the event: (i) that the other party commits a non-remediable, material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the noticing party within 30 days of being notified in writing of such breach; or (ii) of institution of bankruptcy, receivership, legal insolvency, reorganization, or other similar proceedings by or against the other party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within 30 days after they are instituted; or the legal insolvency of, making of an assignment for the benefit of creditors of, the admittance of any involuntary debts as they mature by, or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Where a party has a right to terminate the Agreement, the terminating party may, at its discretion, either terminate the Agreement in whole or terminate only the applicable Order Document. Order Documents that are not terminated shall continue in full force and effect under the terms of this Agreement. Upon expiration or termination of this Agreement by VFA or Client, Client shall promptly cease all use of the Software and shall either securely destroy or securely transfer, at VFA's sole discretion, all Software, and securely delete existing copies (unless storage of any data is required by applicable law, and if so Client shall notify VFA of such requirement).
- 12.3. **Termination Refund or Payment Obligations.** In the event Client terminates this Agreement pursuant to Section 12.2, VFA shall refund all pre-paid but unused Software fees to Client. Termination of this Agreement by VFA pursuant to Section 12.2 shall not excuse Client's obligation to pay in full any and all amounts due and owing, nor shall such termination result in a refund of Fees paid.
- 12.4. **Survival.** The following provisions will survive any termination or expiration of the Agreement: Sections 1, 3, 4, 5, 6, 8.2, 9, 11, 12.3 12.4, and 13.

## 13. GENERAL PROVISIONS

- 13.1. **Force Majeure.** To the extent that a delay or failure to perform all or any part of this Agreement or applicable Order Document is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this Section, neither party shall have the right to terminate the Agreement or any Order Document, and neither party shall incur any liability to the other party on account of any loss, claim, damage, or liability resulting from such delay or failure to perform. Such events, occurrences, or causes shall include, without limitation, acts of God, acts of government, flood, fire, explosions, earthquakes, civil unrest, acts of war, acts of terrorism, strikes, lockouts, riots or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within VFA's possession or reasonable control, and denial of service attacks ("**Force Majeure Events**"). Dates by which performance obligations are scheduled to be met will be extended for a period of time



equal to the time lost due to any delay so caused, however, either party may terminate the Agreement or an Order Document due to a Force Majeure Event extending beyond 90 days.

- 13.2. **Assignment.** In the event of a Change of Control, either party may assign this Agreement in its entirety (including all Order Documents) to its parent company or other affiliated company. In the event such assignment is not subject to the foregoing, neither party may assign the Agreement or any of its rights and obligations herein without the other party's prior written consent (which shall not be unreasonably withheld). In the event of an assignment due to a Change of Control, VFA will have the right to: (i) adjust the costs set forth in the Agreement in order to reflect any change to the Software and/or services; and (ii) invoice additional Fees for the transition of Software and/or services to the new Client party.
- 13.3. **Notice of U.S. Government Restricted Rights.** If the Client hereunder is the U.S. Government, or if the Software is acquired hereunder on behalf of the U.S. Government with U.S. Government federal funding, notice is hereby given that the Software is commercial computer software and documentation developed exclusively at private expense and are furnished as follows: "U.S. GOVERNMENT RESTRICTED RIGHTS. Software and the Protected Rights delivered subject to the FAR 52.227-19. All use, duplication and disclosure of the Software and/or the Protected Rights by or on behalf of the U.S. Government shall be subject to this Agreement and the restrictions contained in FAR 52.227-19, Commercial Computer Software License - (December 2007)".
- 13.4. **Export.** Client shall fully comply with all relevant and applicable export laws and regulations of the United States to ensure that (i) the Software and/or Protected Rights are not exported, directly or indirectly, in violation of United States law, export embargo, prohibition, or restriction, and (ii) no Software is accessed or used in violation of any United States law, export embargo, prohibition, or restriction.
- 13.5. **Non-Solicitation.** During the term of this Agreement, and for a period of one year following its termination, neither party will solicit for employment, directly or through other parties, without the other party's written permission, any individual employed by the other party that is involved in the performance of this Agreement, provided however that the solicitation or hiring of individuals responding to general public marketing and recruiting advertisements and events shall not be a violation of this provision; only active, targeted solicitation is prohibited.
- 13.6. **Equal Opportunity Employer.** VFA's employment decisions are not based on an employee's race, color, religion or belief, national, social or ethnic origin, sex (including pregnancy), age, physical, mental, or sensory disability, HIV status, sexual orientation, gender identity and/or marital, civil union, or domestic partnership status, past or present military service, medical or genetic information, family or parental status, or any other status protected by the laws or regulations in the locations where we operate.
- 13.7. **Notices.** Any notice sent pursuant to this Agreement shall be delivered (i) by hand, overnight courier, or registered mail, return receipt requested, to the address of the parties set forth in the Agreement, or to such other address of the parties designated in writing in accordance with this subsection, (ii) by e-mail to [legal@accruent.com](mailto:legal@accruent.com), or (iii) by facsimile.
- 13.8. **Relationship.** This Agreement does not and is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.
- 13.9. **Invalidity.** If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 13.10. **No Waiver.** Any waiver of the provisions of this Agreement, or of a party's rights or remedies under the Agreement, must be in writing to be effective. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. The waiver by either of the parties of a breach or of a default under any of the provisions of the Agreement shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights, or privileges hereunder. The rights and remedies provided under this Agreement are cumulative and none is exclusive of any other, or of any rights or remedies that any party may otherwise have at law or in equity. Failure, neglect, or delay by a party to enforce the provisions of the Agreement or its rights or remedies at any time, shall not be construed and deemed to be a waiver of such party's rights under the Agreement and shall not in any way affect the validity of the whole or any part of the Agreement or prejudice such party's right to take subsequent action.
- 13.11. **No Third Party Beneficiaries.** This Agreement is for the benefit of the parties and their successors, permitted assigns, and does not confer any rights or benefits on any third party, including any employee, client, or employee of a client or a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to VFA under the Agreement shall apply equally to the owner of the Partner Software with respect to the Partner Software, and such third party is an intended third party beneficiary of the Agreement, with respect to the Partner Software.
- 13.12. **Governing Law and Venue.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to its principles of conflict of laws. Any dispute shall be litigated in the state or federal courts located in the State of Texas to whose exclusive jurisdiction the parties hereby consent. For





purposes of establishing jurisdiction in Texas under this Agreement, each party hereby waives, to the fullest extent permitted by applicable law, any claim that: (i) it is not personally subject to the jurisdiction of such court; (ii) it is immune from any legal process with respect to it or its property; and (iii) any such suit, action, or proceeding is brought in an inconvenient forum. The parties agree that this contract is not a contract for the sale of goods, and shall not be governed by any codification of Article 2 or 2A of the Uniform Commercial Code or the Uniform Computer Information Technology Act, or any references to the United National Convention on Contracts for the International Sale of Goods.

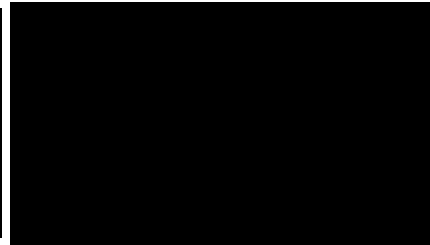
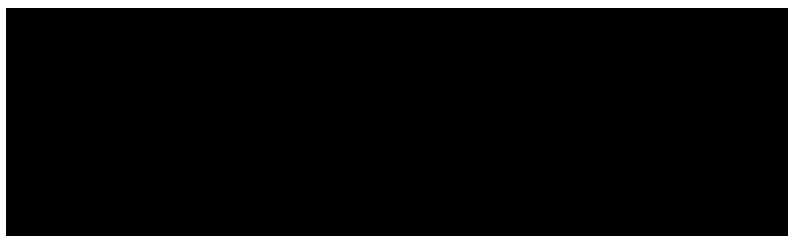
- 13.13. **Drafting.** The Agreement shall not be construed in favor of or against a party based on the author of the document.
- 13.14. **Counterparts.** The Agreement may be executed in one or more counterparts, each of which shall constitute an enforceable original of the Agreement, and that facsimile and/or PDF-scanned copies of signatures shall be as effective and binding as original signatures.
- 13.15. **Insurance.** VFA and each of its subsidiaries are insured by insurers of recognized financial responsibility against losses and risks in amounts that VFA's management believes to be prudent and customary in the businesses and industries in which they are engaged. Neither VFA nor its subsidiaries has been denied insurance coverage and neither VFA nor its subsidiaries has any reason to believe that it will be unable to: (i) renew its existing insurance coverage when such coverage expires, or (ii) obtain similar coverage as may be necessary to continue its business and not adversely affect the condition, earnings, business, or operations of VFA and its subsidiaries. Relevant insurance coverage information will be provided to Client through the Due Diligence Package (defined below).
- 13.16. **Due Diligence Package.** Upon request, but no more than once per year, VFA shall provide to Client a package with information relevant to the services being licensed and/or purchased, including compliance reports, audit reports, certification reports, standard insurance certificates, and relevant VFA policies ("**Due Diligence Package**"). The Due Diligence Package is VFA's Confidential Information.



IN WITNESS WHEREOF, the duly authorized representatives of the parties agree to the terms and conditions of this Agreement.

The University of North Texas System

VFA, Inc.



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\_\_\_\_\_  
\_\_\_\_\_

Date: 5/4/2021

Date: 5/4/2021



## Exhibit A: SaaS-Specific Terms and Conditions

1. **SaaS SERVICES LICENSE.** Subject to the terms of this Agreement, VFA grants to Client and its Affiliates, for the Term of this Agreement, the non-exclusive, non-assignable, royalty-free, and worldwide right to access and use the SaaS Services for Client's internal business purposes. Purchased SaaS Services may be accessed by Client and used to manage the License Metrics specified in the Order Document. Client may purchase additional License Metrics, subject to an additional Order Document at the then-current price in effect, prorated for the remainder of the then-current Term. The term of the added License Metrics will be concurrent with the Agreement Term. Fees are based on SaaS Services and License Metrics purchased, and not actual usage.
  - 1.1. **SaaS Environment.** Client is responsible for obtaining and maintaining, at its own expense, all equipment needed to access the SaaS Services, including but not limited to Client's internet access.
  - 1.2. **Support Services.** Subject to Client's payment of applicable Fees, VFA will provide to Client the Support services applicable to each SaaS Service purchased.
  - 1.3. **Backups and Restoration Services.** In consideration of the Fees, Client may, no more than once annually, request in writing a backup copy of Client Data in a format acceptable to it ("**Backup Copy**"). Provided Client is not otherwise in breach of the Agreement, and upon written request and subject to Client's payment of applicable Fees (for which a then-current fee schedule will be provided upon request), VFA will perform database restoration services.
  - 1.4. **Passwords; Security.** Client and its users are in control of the creation and dissemination of passwords. As such, Client will be responsible for (i) maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized user, and (ii) any and all activities that occur under Client's account. Client agrees to immediately notify VFA of any unauthorized use of Client's account or any other breach of security known to Client. VFA shall have no liability for any loss or damage arising from Client's failure to comply with these requirements. VFA will maintain Client passwords as confidential and will not disclose them to third parties.
2. **SECURITY.**
  - 2.1. **Data Location.** VFA will maintain the SaaS Services either at an VFA location or through a reputable Partner, where it is subject to commercially reasonable security precautions. Such precautions shall comply with industry standards for the type of information maintained and shall include, but not be limited to, procedures and measures to prevent unauthorized access to the SaaS Services and unauthorized use of and/or modification of Client Data. Notwithstanding such security precautions, and in no way diminishing or revoking VFA's security obligations herein, Client acknowledges that use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the SaaS Services.
  - 2.2. **Disaster Recovery.** VFA's disaster recovery service ("**Disaster Recovery Plan**") is included in Client's Fees. In the event a disaster is declared, VFA will initiate the Disaster Recovery Plan and shall use commercially reasonable efforts to resume access to Client's environment at VFA's alternate data center facility in accordance with VFA's recovery time objectives.
  - 2.3. **Data Breach.** Upon becoming aware of or suspecting a breach or potential breach of Client Data, including but not limited to unauthorized or unlawful processing of, disclosure of, access to, destruction of, loss of, alteration to, or corruption of Client Data ("**Data Breach**"), Client must immediately notify VFA in writing. Client's notification must include any relevant information relating to the Data Breach. Such information may include, but is not limited to, the nature of the Data Breach, the nature of the Client Data affected, the categories and number of users concerned, the number of Client Data records concerned, measures taken to address the Data Breach and the possible consequences and adverse effect of the Data Breach. To the extent possible, Client must maintain a log of the Data Breach, including facts, effects, and remedial action taken. Upon becoming aware of a Data Breach, VFA must notify Client in writing within 72 hours following the discovery of the Data Breach. In the event that such Data Breach is determined by VFA to be VFA's responsibility, it will, at its own cost, take all steps to restore, re-constitute, or reconstruct any Client Data which is lost, damaged, destroyed, altered, or corrupted as a result of a Data Breach, with as much urgency as VFA would perform if it were its own data, and shall provide Client with all reasonable assistance in respect of any such Data Breach.
3. **ACCEPTABLE USE.** Client acknowledges and agrees that VFA does not monitor or police the content of Client's or its users' communications or data transmitted through the SaaS Services, and that VFA shall not be responsible for the content of any such communications or transmissions. Client shall use the SaaS Services exclusively as authorized in this Agreement and pursuant to all applicable laws and regulations. Client agrees not to post or upload any content or data which (i) contains Malicious Code; (ii) violates the rights of others, such as data which infringes on any intellectual property rights, or violates any right of privacy or publicity; or (iv) otherwise violates any applicable law or regulation. Client further agrees not to interfere or disrupt networks connected to the SaaS Services, not to interfere with another entity's use and enjoyment of similar services and to comply with all regulations, policies and procedures of networks connected to the SaaS Services. VFA may remove any violating



content posted on the SaaS Services and/or training services or transmitted through the SaaS Services, without notice to Client. Upon notice provided to Client, VFA may suspend or terminate any user's access to the SaaS Services in the event that VFA reasonably determines that such user has violated the terms and conditions of this Agreement.

4. **TERM.** SaaS Services commence on the date specified in the Order Document and continue for the term set forth therein ("**Initial Term**"). Following the end of the Initial Term, SaaS Services shall automatically renew for 12 months (a "**Renewal Term**") unless either Party gives written notice 60 days prior to the end of the Initial Term, or any Renewal Term, of its intention to terminate the SaaS Service, or unless agreed to otherwise by the parties in writing. Any proposed change to pricing or terms for a Renewal Term shall be provided by VFA in writing no less than 90 days prior to the end of the Initial Term or any Renewal Term. The Initial Term and Renewal Terms are collectively referred to as the "**Term**."

## Exhibit B: Perpetual License

1. **LICENSE GRANT – PERPETUAL LICENSE.** Subject to the terms and conditions of this Agreement and any applicable Order Document, including without limitation the restrictions set forth in Section 6 of the Agreement and timely payment of the applicable Fees, VFA hereby grants to Client a limited, non-exclusive, personal, non-transferable and perpetual (subject to VFA's termination rights as set forth in the Agreement) license to (i) install, run and use the Software listed in the Order Document, solely for Client's own business operations and solely as enabled by the license keys, and (ii) use the Documentation in connection with such use of the Software. The Software may be accessed by or used to manage no more than the number of License Metrics specified in the Order Document. Additional License Metrics may be purchased under an additional Order Document at the pricing in effect at the time the additional License Metrics are purchased. Fees are based on License Metrics purchased and not actual usage.
  - 1.1. **Copies.** Client may make a reasonable number of machine-readable copies of the Software solely for internal backup or archival purposes, and may retain such copies for the Term of this Exhibit. All Intellectual Property rights notices must be reproduced and included on such copies. Client shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform VFA in writing, upon request, of such number and locations.
2. **MAINTENANCE**
  - 2.1. Subject to Client's timely payment of Fees, VFA will provide Maintenance services to Client during the Term. VFA is under no obligation to provide Support with respect to: (i) Software that has been altered or modified (ii) software that has been implemented or installed by anyone other than VFA or its licensors; (iii) a release for which Maintenance has been discontinued; (iv) Software used other than in accordance with the Documentation or the Agreement; (v) discrepancies that do not significantly impair or affect the operation of the Software; or (vi) any systems or programs not supplied by VFA. If an error was corrected or is not present in a more current version of the Software, VFA shall have no obligation to correct such errors in prior versions of the Software.
  - 2.2. Subject to Client's timely payment of the applicable Fees, Maintenance is provided for all Software, unless otherwise noted in the Order Document, provided however that with respect to Partner Software, VFA's obligation is limited to using commercially reasonable efforts to obtain Support from the applicable Partner.
  - 2.3. If ordered, Maintenance must be ordered for all License Metrics utilized by Client.
  - 2.4. Fees for Maintenance do not include implementation, training, and other Professional Services, such as project management, conversion, report writing, and external systems interface development.
  - 2.5. It is Client's responsibility to ensure that all appropriate users receive initial training services sufficient to enable Client to effectively use the Software. Failure to do so could result in (i) increased service call fees, if such service calls are deemed by VFA to be excessive as a result of insufficient training, at VFA's discretion; (ii) extension of any launch dates or timelines; or (iii) delay in the performance of VFA's obligations set forth herein.
  - 2.6. Client shall ensure that VFA's assigned technical personnel are able to access the System remotely. Client shall be responsible for providing access through any security measures it deems necessary. VFA alone shall decide whether access to the System is sufficient for Maintenance or Support purposes. "**System**" means the total complement of Software furnished and maintained by VFA.
  - 2.7. Maintenance and Support starts on the date specified in the applicable Order Document and continues through the expiration of the term set forth in the Order Document ("**Initial Term**"). Following the end of the Initial Term, Maintenance and Support shall automatically renew for the same length as the Initial Term ("**Renewal Term**"), unless either gives written notice 60 days prior to the end of the Initial Term or any Renewal Term, of its intention to terminate Maintenance or Support. Any proposed change to pricing or terms for a Renewal Term shall be provided in writing by VFA no less than 90 days prior to the end of the Initial Term or any Renewal Term. In the event that the Agreement is terminated in whole, any licenses in Client's possession and control are thereby



forfeited.

3. **Hosting of Perpetual License.** Should parties elect for VFA to host the aforementioned license, then Exhibit D applies, and the term of hosting will be the same as term described in 2.6. Any associated costs with the implementation of hosting the licenses the parties will agree to in a SOW.

## Exhibit C: Term License

1. **LICENSE GRANT – TERM LICENSE.** Subject to the terms and conditions of this Agreement and any applicable Order Document, including without limitation the restrictions set forth in Section 6 of the Agreement and timely payment of the applicable Fees, VFA hereby grants to Client a limited, non-exclusive, personal, non-transferable license to, during the Term (i) install, run and use the Software listed in the Order Document, solely for Client's own business operations and solely as enabled by the license keys, and (ii) use the Documentation in connection with such use of the Software. The Software may be accessed by or used to manage no more than the number of License Metrics specified in the Order Document. Additional License Metrics may be purchased under an additional Order Document at the pricing in effect at the time the additional License Metrics are purchased. Fees are based on License Metrics purchased and not actual usage.
  - 1.1. **Copies.** Client may make a reasonable number of machine-readable copies of the Software solely for internal backup or archival purposes and may retain such copies for the Term of this Exhibit. All Intellectual Property rights notices must be reproduced and included on such copies. Client shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform VFA in writing, upon request, of such number and locations.
2. **MAINTENANCE**
  - 2.1. Subject to Client's timely payment of Fees, VFA will provide Maintenance services to Client during the Term. VFA is under no obligation to provide Maintenance with respect to: (i) Software that has been altered or modified; (ii) Software that has been implemented or installed by anyone other than VFA or its licensors; (iii) a release for which Maintenance has been discontinued; (iv) Software used other than in accordance with the Documentation or the Agreement; (v) discrepancies that do not significantly impair or affect the operation of the Software; or (vi) any systems or programs not supplied by VFA. If an error was corrected or is not present in a more current version of the Software, VFA shall have no obligation to correct such errors in prior versions of the Software.
  - 2.2. Subject to Client's timely payment of the applicable Fees, Maintenance is provided for all Software, unless otherwise noted in the Order Document, provided however that with respect to Partner Software, VFA's obligation is limited to using commercially reasonable efforts to obtain Maintenance from the applicable Partner.
  - 2.3. If ordered, Maintenance must be ordered for all License Metrics utilized by Client.
  - 2.4. Fees for Maintenance do not include implementation, training, and other Professional Services, such as project management, conversion, report writing, and external systems interface development.
  - 2.5. It is Client's responsibility to ensure that all appropriate users receive initial training services sufficient to enable Client to effectively use the Software. Failure to do so could result in (i) increased service call fees, if such service calls are deemed by VFA to be excessive as a result of insufficient training, at VFA's discretion; (ii) extension of any launch dates or timelines; or (iii) delay in the performance of VFA's obligations set forth herein.
  - 2.6. Client shall ensure that VFA's assigned technical personnel are able to access the System remotely. Client shall be responsible for providing access through any security measures it deems necessary. VFA alone shall decide whether access to the System is sufficient for Maintenance purposes. "**System**" means the Software furnished and maintained by VFA.
  - 2.7. Maintenance and Support starts on the date specified in the applicable Order Document and continues through the expiration of the term set forth in the Order Document ("**Initial Term**"). Following the end of the Initial Term, Maintenance and Support shall automatically renew for the same length as the Initial Term ("**Renewal Term**"), unless either gives written notice 60 days prior to the end of the Initial Term or any Renewal Term, of its intention to terminate Maintenance or Support. Any proposed change to pricing or terms for a Renewal Term shall be provided in writing by VFA no less than 90 days prior to the end of the Initial Term or any Renewal Term.
3. **Hosting of Perpetual License.** Should parties elect for VFA to host the aforementioned license, then Exhibit D applies, and the term of hosting will be the same as term described in 2.6. Any associated costs with the implementation of hosting the licenses the parties will agree to in a SOW.



## Exhibit D: Service Level Attachment

VFA Support (“**Support**”) remotely assists Client with issues during standard business hours and via email, phone support, and its online ticketing system called VFA Customer Communities. Support is only provided in English. Designated Support Contacts (defined below) are provided support for Incidents in the current and Supported VFA Releases that run unaltered on designated supported database products, office suite products, web browsers, and/or operating systems, as set forth in Documentation. VFA is only obligated to provide support for the software as it was delivered by VFA and will not provide support for any Software that has been altered or modified by any party other than VFA or its Partners.

### 1. DEFINITIONS

- 1.1. “**After-Hours**” processes ensure that, in the case of High Severity Incidents that occur outside of Business Hours, VFA is addressing critical system issues. For verified High Severity Incidents, Support will begin Incident remediation.
- 1.2. “**Business Hours**” VFA’s U.S. Support Hours are Monday through Friday, 7 AM – 7 PM (CST), except for Holidays.
- 1.3. “**Designated Support Contacts**” are members of Client’s organization that are the primary liaisons between the Client and Support, and that have been qualified by VFA. The Designated Support Contact is the Client’s users’ first level of support who logs Client’s internal support requests, and in the event of a technical problem, acts as the sole point of contact for Support. Client understands and acknowledges that if Designated Support Contacts are unavailable, this may adversely affect VFA’s ability to resolve Incidents. If an Incident case lacks the necessary product or technical knowledge to assist Support in Incident resolution, Support may refer to another member of Client’s organization who has a more detailed understanding of the Incident. VFA provides direct support for up to 5 Designated Support Contacts per Client, and additional Designated Support Contacts may be purchased separately.
- 1.4. “**Downtime**” shall mean: (a) planned weekly downtime, for which VFA will provide notice in advance and will, to the extent reasonably practicable, schedule on Friday 9 PM - Saturday 2 AM (CST); (b) emergency downtime (of which VFA shall provide 24 hours advance notice, and which will not last more than one hour), which will not last for more than one hour; (c) any unavailability caused by circumstances beyond VFA’s reasonable control and without any negligence on its part, including without limitation, any Force Majeure Event; (d) any errors that result from Client’s improper use of the Services, or (e) problems caused by Client Data, Client’s power supply, hardware, database, network, web servers, operation, or other environmental factors of Client not within the direct control of VFA.
- 1.5. “**High Severity**” issues are verified by Support as Severity 1 or 2 Incidents, in accordance with VFA’s Severity Level classifications. In the case of a High Severity Incident, Client must call Support immediately, in order for Support to confirm the impact and severity of the Incident, regardless of Business Hours or Holidays. Incident Response Times do not begin until Support receives a phone call from Client, which ensures immediate response and engagement of After-Hours processes. Non-High Severity Incidents will be addressed during Business Hours.
- 1.6. “**Holidays**” are days that the VFA offices are not open for normal business operations. The holidays which VFA observes are as follows: New Year’s Day (January 1), President’s Day (Third Monday in February), Spring Holiday (Friday before Easter), Memorial Day (Last Monday in May), Independence Day (July 4), Labor Day (First Monday in September), Thanksgiving (Fourth Thursday and Friday in November), Christmas Eve (December 24), and Christmas Day (December 25).
- 1.7. “**Incident**” refers to an event requiring Client to contact Support. An Incident may describe an issue which causes, or may cause, interruption to, or a reduction in, the quality of the SaaS Services, including problems with or defects in the Software, data related to the SaaS Services, or troubleshooting requests.
- 1.8. “**Response Time**” is the amount of time for Support to acknowledge requests, assuming there are no issues with account standing. Response Times are not a resolution goal and should not be interpreted as a guarantee of service.
- 1.9. “**Service Credit**” shall mean the average daily subscription fee, calculated by dividing the annual subscription fee for the applicable SaaS Service by 365.
- 1.10. “**Severity**” is a level for each case that is assigned solely by VFA and is based on the possible risk or effect of an Incident on Client’s business operations. Severity shall be classified by VFA in accordance with VFA’s Severity Level classifications noted herein.
- 1.11. “**Supported VFA Release**” consists of the current Generally Available (GA) software product offered by VFA and includes up to 2 major releases from the current GA software product. Any Incidents that occur on Software that is older than Supported VFA Releases are subject to best effort support when a Supported VFA Release provides resolution, and VFA is under no obligation to provide extended support or further development for such Incidents. If Client requires additional support for unsupported VFA releases, Support may refer Client to Professional Services, which are subject to additional fees.





2. **CLIENT TRAINING.** Client is responsible for ensuring that all of its appropriate users receive initial training services sufficient to enable Client to effectively use the Software (i.e. attending all relevant training sessions, etc.). Failure to do so could result in (i) at VFA's discretion, increased service call fees, if such service calls are deemed excessive as a result of such insufficient training on the part of Client or its users; (ii) extension of any launch dates or timelines; or (iii) delay in the performance of VFA's obligations set forth herein.
3. **VFA SEVERITY DEFINITIONS – INCIDENT RESPONSE TIMES.** Clients must report Incidents to Support for SaaS Services via either VFA Customer Communities or email case creation. Once a case is reported into VFA Customer Communities, VFA begins measuring Response Time. For High Severity (Severity 1 or 2) Incidents, the Client must call Support immediately so that the process of verifying the Incident can begin. Response Time for Severity 1 or 2 Incidents begins upon the call made to Support.

Severity Level	Description	Target Response Time
1	A critical Incident that results in a complete system outage or major application failure and prevents Client from performing critical business functions that have immediate impacts to finances or data integrity. There is no workaround available.	1 hour
2	A serious Incident that prevents the execution of a critical business function, causing disruption of a major business function. It is causing serious impact on daily functions or processing and there is no acceptable workaround.	4 hours
3	An Incident that does not prevent the execution of a critical business function and does not impact data integrity. The problem may be reasonably circumvented using an available workaround.	2 business days
4	An inquiry and/or low-impact process issue. Examples include cosmetic defects on screens, errors in documentation, or an enhancement request.	3 business days

Number of Missed Severity 1 and 2 Target Response Times during a Calendar Month	Number of Service Credits
0-1†	0
2-4	5
5-7	8
Over 8	12

† A single miss of target SLA that occurs for two (2) consecutive months shall grant Client 3 service credits.

4. **SERVICE LEVELS – SERVICE AVAILABILITY (SPECIFIC TO HOSTED ENVIRONMENT).** The SaaS Service is expected to be available twenty-four (24) hours per day, seven (7) days per week (excluding Downtime). In the event VFA fails to meet an average of 98.5% availability during a particular calendar month (excluding Downtime), VFA will, as Client's sole and exclusive remedy, credit to Client's account one Service Credit for each percentage point below 98.5% availability (excluding Downtime) during such calendar month. Client acknowledges that VFA does not control the transfer of data over telecommunications facilities, including the Internet. VFA does not warrant secure operation of the SaaS Services or that it will be able to prevent third party disruptions of such Services. Client acknowledges further that the SaaS Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. VFA is not responsible for any delays, delivery failures, or other damage resulting from such problems.
5. **GENERAL.** VFA will monitor the availability of the SaaS Service and Response Times for reported Incidents, and any applicable Service Credits will be credited to Client on the following year's invoice. Client acknowledges and agrees that the allocation of Service Credits shall not result in any refund of Fees, except at the end of the Term or the applicable Renewal Term.



## Exhibit E: Professional Services

1. **Defined Terms.**
  - 1.1. **"Change Control"** is defined as the process by which requests for changes in deliverables, responsibilities, resources or project schedule are properly recorded, evaluated, distributed and incorporated into the SOW. Change Control process will be defined by Client and VFA as part of project planning.
  - 1.2. **"Change Order"** is defined as a document which captures any and all alterations to this SOW with regard to changes in deliverables, responsibilities, resources, Term Information or Services Fees.
  - 1.3. **"Notification Period"** is defined as the period of time in which the Client must notify VFA of material nonconformance with services provided herein.
2. **Changes to Scope and/or Schedule.** If at any time either party does not meet deadlines outlined within the agreed upon project schedule, Client and VFA both agree and acknowledge the following may occur: (1) Project Schedule will be revised to accommodate any delays, and a new, mutually agreed upon schedule will be drafted by the VFA project manager and signed by appropriate Client and VFA representatives, (2) If delays are extensive, project resources will be reallocated to other engagements. (3) Fees for additional work or extension of resources may be incurred
  - 2.1. During the course of the project, if VFA determines or could reasonably determine any Client actions or direction constitute a requirement to perform additional work, not otherwise specified herein, VFA shall notify Client within 30 days that Client has requested VFA to perform additional work.
  - 2.2. VFA agrees and acknowledges that it waives the right to request reimbursement for work already performed if VFA fails to notify Client of the requirement to perform additional work. VFA will complete a Change Order containing the changes to the project, project schedule, deliverables and/or Services and Fees contained in this SOW. Client may request up to 10 business days to determine whether to execute the Change Order. After the 10 business days, the terms of the Change Order may be subject to change depending upon availability of resources, impact to project schedule or severity of impact on existing activities.
3. **Travel and Expense.**
  - 3.1. VFA will provide notice of any requested travel that will occur on a non-business day (weekend or holiday)
  - 3.2. VFA will provide services via phone, internet, and email or otherwise remotely from the VFA premises unless otherwise stated in the relevant SOW.
  - 3.3. In the event Client cancels or reschedules any travel with less than 30 business days of notice prior to the scheduled travel date, Client is responsible for up to 50% of any additional fees associated with rebooking or cancelling the arrangements.
  - 3.4. In the event Client cancels or reschedules any travel with less than 7 business days of notice prior to the scheduled travel date, Client is responsible for up to 100% of any additional fees associated with rebooking or cancelling the arrangements.
  - 3.5. If applicable, travel time is calculated as the time between departure from VFA premises, local airport or home office and arrival at destination address, as determined by both Parties prior to departure, or destination airport.
4. **Project Close.** The Notification Period prior to the closure of the project is 10 business days from the date that VFA provides written notice to Client that states the delivery of services is complete. In the event Client does not provide notice of material nonconformance or request for change during Notification Period, the project will be closed and no additional work will be performed by VFA pursuant to the services contained herein. In the event Client does provide notice of material nonconformance or request for change after the expiration of Notification Period, such work shall only be performed under a new contractual arrangement. In the event material nonconformance is identified within the Notification Period, VFA shall promptly correct such non-conformance, which was due to fault or negligence of VFA, at no additional cost to Client.





## Exhibit F: Data Access and Rights

1. **COLLECTION AND OWNERSHIP.** Client acknowledges that data regarding its use of the Software (“Usage Data”) may be collected from one or more sensors, Internet of Things (IoT) devices, or other data gathering equipment installed or located on Client’s premises (collectively “Devices”), including location(s) owned, occupied, or otherwise under control of Client. If Client has ownership rights to one or more of the Devices, Client owns and retains full access and rights to the Usage Data, or if resold by a field service provider the end user acquires full access and rights as a licensor (and be classified as “Licensor” herein). If VFA owns one or more of the Devices, notwithstanding the Devices being located on Client’s premises, VFA shall own and retain full access and rights to the Usage Data.
2. **USE AND ACCESS.** Each of the parties shall have access to the other party’s Usage Data. However, for avoidance of doubt, VFA may not, either directly or indirectly, sell or share VFA-owned Usage Data with any third parties without the prior express written consent of Client. Client may sell or share Client-owned Usage Data to third parties without the consent of VFA. Unless mutually agreed upon by the parties, in no event may a party sell or share data owned by the other party to or with any third-party. VFA’s use of the Usage Data shall primarily be for purposes of improving the Services.
3. **LICENSE GRANT.** Client grants to VFA a non-exclusive, royalty free license, to use any data and information that Client provides, generates, transfers, or makes available to VFA for purposes of performing its obligations under the Agreement, as well as to generate Resultant Data for product improvement, product development, marketing, and other business purposes.
4. **RESULTANT DATA.** Client hereby agrees that VFA and its successors and assigns may collect, use, publish, disseminate, sell, transfer, and otherwise exploit the collected Usage Data only if such data (i) has been anonymized by VFA or its designee; or (ii) aggregated with Usage Data from other Clients. For the avoidance of doubt, such anonymized and aggregated Usage Data will be considered a part of Resultant Data as set forth in the Agreement. Resultant Data is used by VFA to compile statistical, performance information for creation and development of products, product improvements, product creation, and product marketing . VFA is the sole owner of all right, title, and interest in and to Resultant Data and any conclusions, impressions, understandings, insights, process improvements, or other information derived, extracted, or otherwise obtained by VFA from Resultant Data, and the Resultant Data shall be owned exclusively by VFA with all rights thereto, which shall be deemed VFA’s Intellectual Property for purposes of this Agreement.
5. **COMBINATION.** Resultant Data and data obtained from other sources may be combined (“Combined Data”) either by VFA or by a third-party data analysis vendor and stored either at an VFA-controlled repository or a third-party repository in any form of structured, raw, or other data format. Combined Data in any form may be used by VFA for any lawful purpose. VFA is the sole owner of all right, title, and interest in and to the Combined Data and any analytics generated from the Combined Data, including the right to collect, use, publish, disseminate, sell, transfer, and otherwise exploit the Combined Data and analytics, which shall be deemed VFA’s Intellectual Property for purposes of this Agreement.
6. **TRANSPORT, SECURITY, AND STORAGE.** Except for data collected and transported directly from a sensor, Combined Data may be transported by VFA to a remote or third-party vendor site. VFA shall take steps to ensure transport of the data is secure, including the use of various encryption technologies and other security measures. Further security shall include maintaining adequate physical controls and password protections for any server or system on which data is stored, and any other measures reasonably necessary to prevent any use or disclosure of data other than as allowed under this Agreement.
7. **AFFILIATION.** Client hereby agrees that in the event VFA is divested, sold, separated, or otherwise no longer affiliated with, or under common control of, its parent company, a copy of all data including Resultant Data shall remain with the parent company along with all the same rights, title and obligations as VFA set forth herein.



## Exhibit G: California Consumer Privacy Act Data Processing Provisions

These CCPA Data Processing Provisions (the “**CCPA Provisions**”) set forth the terms and conditions relating to compliance with the California Consumer Privacy Act of 2018, Cal. Civil Code § 1798.100 et seq., (“**CCPA**”) and related regulations, as may be amended from time to time. The CCPA Provisions shall only apply and bind the Parties if and to the extent Client is a Business under the CCPA. These CCPA Provisions prevail over any conflicting terms of the Agreement, but does not otherwise modify the Agreement. All capitalized terms used in these CCPA Provisions that are not otherwise defined herein or in the Agreement shall have the meanings set forth in the CCPA.

1. VFA shall process Personal Information only as necessary for the purposes of performing the services under this Agreement on behalf of Client. VFA shall not (i) sell any Personal Information received from Client; or (ii) retain, use, or disclose the Personal Information provided by or collected on behalf of Client for any purpose other than for the specific purpose of performing the services specified in the Agreement, including retaining, using, or disclosing the Personal Information for a commercial purpose other than providing the services specified in this Agreement.
2. VFA shall not respond to any requests related to Personal Information processed on behalf of Client other than to inform the requestor that VFA is not authorized to directly respond to a request, and recommend the requestor submit the request directly to Client.
3. Client will indemnify and hold harmless VFA against all losses, fines, and regulatory sanctions arising from any claim by a third party (including any Governmental Authority) arising out of Client’s negligence, wilful misconduct, and bad faith in connection with Client’s directions to VFA with respect to processing Personal Information or any other failure by Client to comply with any of its obligations under the CCPA.

## Exhibit H: GDPR Data Protection Provisions

RESERVED



# OMNIA

PARTNERS

Thank you for utilizing the OMNIA Partners Customer Proposal Number (CPN) system.

Here is the proposal number you have requested: **TX-R161801-309481**

<b>Requestor Name</b>	[REDACTED]
<b>Requestor Email</b>	<a href="mailto:cnabers@accruent.com">cnabers@accruent.com</a>
<b>Supplier</b>	
<b>Contract Number</b>	R161801
<b>Customer Requesting Proposal</b>	The University of North Texas System
<b>City of Project</b>	Dallas
<b>State of Project</b>	Texas
<b>Certified Proposal Number</b>	TX-R161801-309481
<b>Proposal Amount</b>	\$15,975.00
<b>Comments</b>	This proposal is for VFA.facility SaaS subscription, Training, and Professional Services.

[Click here](#) to access the CPN Process Document. If you have any questions, please contact us at [info@omniapartners.com](mailto:info@omniapartners.com).



OMNIA Partners | 840 Crescent Centre Drive, Suite 600 | Franklin, TN 37067 | United States

You received this email because you are subscribed to Member Only Information from OMNIA Partners.

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**STANDARD ADDENDUM TO AGREEMENT**

Contracts with the University of North Texas System ("UNTS") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNTS; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas System – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** UNTS is exempt from the payment of taxes and will provide documentation confirming its tax exempt status.

**Breach of Contract Claims Against UNTS.** Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNTS that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. Venue for any suit filed against UNTS shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, UNTS' continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNTS shall issue written notice to Vendor that UNTS may terminate the Agreement without further duty or obligation.

**Travel Expenses.** Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Delivery.** Delivery shall be FOB Destination.

**Public Information.** UNTS shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNTS in an electronic format. The requirements of Subject J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNTS records retention requirements; (2) to promptly provide contracting information to UNTS when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNTS or to preserve all contracting information according to UNTS' records retention requirements.

**Required Posting of Contracts on Website.** Vendor acknowledges and agrees that UNTS is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

**Insurance.** UNTS, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNTS shall, without further requirement, satisfy all insurance obligations of UNTS under the Agreement.

**Israel Non-Boycott Verification.** If the Agreement is subject to Texas Gov't Code Section 2270.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

**Limitations.** UNTS is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNTS property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNTS, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

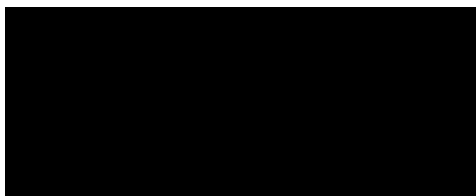
**VENDOR:** Accruent, LLC

**UNIVERSITY OF NORTH TEXAS SYSTEM**

Date: 5/4/2021



October 20, 2020



[timmm@accruent.com](mailto:timmm@accruent.com)

Re: Renewal Award of Contract # R161801

Dear Mr. McLean:

Per official action taken by the Board of Directors of Education Service Center, Region 4 on October 20, 2020, Region 4 ESC is pleased to announce that Accruent LLC has been awarded an annual contract renewal for the following, based on the sealed proposal submitted to Region 4 on November 15, 2016, and subsequent performance thereafter:

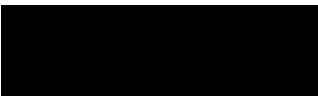
**Contract**

Facilities Management Software and Solutions

The contract will expire on March 31, 2022, completing the fifth year and final year of a five-year term contract. The contract is available through OMNIA Partners, Public Sector. Your designated OMNIA Partners, Public Sector contact is Deborah Bushnell, at (713) 554-7348 or [deborah.bushnell@omniapartners.com](mailto:deborah.bushnell@omniapartners.com).

The partnership between Accruent LLC, Region 4 and OMNIA Partners, Public Sector can be of great help to participating agencies. Please provide copies of this letter to your sales representative(s) to assist in their daily course of business.

Sincerely,



Robert Zingelmann  
Chief Financial Officer, Finance and Operations Services