ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201

AGREEMENT NO. 21-POL-SLA-615

THIS AGREEMENT is made, on the day of execution by the County, between Miller Mendel, Inc., 1425 Broadway, #430, Seattle, Washington 98122 ("Contractor"), a Washington State corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

A.   CONTRACT DOCUMENTS
The "Contract Documents" consist of:

   This Agreement
   Exhibit A – Master Software Subscription Services Agreement ("MSSSA")
   Exhibit B – Contract Pricing
   Exhibit C – MSSSA Addendum for Social Intelligence Services
   Exhibit D – MSSSA Addendum for Experian Services
   Exhibit E – FRCA Letter
   Exhibit F – County Nondisclosure and Data Security Agreement (Contractor)
   Exhibit G – County Nondisclosure and Data Security Agreement (Individual)

Exhibits A, B, C, D, F and G are hereby incorporated into this Agreement. Unless otherwise stated in this Agreement, if a term or provision of this Agreement conflicts with a term or provision of the other incorporated Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents shall be construed to be complementary to each other to the extent reasonably possible. Unless otherwise stated in this Agreement, if a term or provision in any of the incorporated Exhibits conflict with this Agreement and/or each other, the precedence of construction shall be, from highest to lowest precedence: (1) this Agreement; (2) Exhibit B Contract Pricing; (3)) Exhibit F County NDA – Contractor; (7) Exhibit G County NDA – Individual; (4) Exhibit A MSSSA (5) Exhibit D Addendum for Experian Services; and, (6) Exhibit C Addendum for SIS. To the extent Exhibit E (FRCA Letter) may be construed as a binding agreement, that agreement is solely between County and Experian Information Solutions, Inc., and the Contractor is neither a party to the FRCA Letter, nor a third-party beneficiary, subcontractor or sublicensee thereto.

This Agreement, with the Contract Documents hereby incorporated, and the precedence of construction, set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2.   SCOPE OF WORK
The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the MSSSA (Exhibit A), the primary purpose of the Work is to provide a web-based software

system for background screening of job applicants. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3.   PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4.   CONTRACT TERM

Time is of the essence. The Work will commence on August 1, 2021 (the "Effective Date") and shall continue through July 21, 2022 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance during the Initial Contract Term by the Contractor the County may renew the Contract consistent with Exhibit A, MSSSA Section 4.2 (Renewal), through issuance of a Notice of Renewal and Purchase Order, under the same contract prices for not more than two (2) additional 12-month periods, from August 1, 2022 to July 31, 2024 (each a "Subsequent Contract Term"); PROVIDED, however, such Renewal shall not be automatic but only by and upon timely delivery to Contractor of Notice of Renewal and Purchase Order by County. The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5.   CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents.

The County will not compensate the Contractor for any goods or services beyond those included in Exhibits A (MSSSA), C (Addendum for SIS) and D (Addendum for Experian Services) unless those additional goods or services are covered by a fully executed amendment to this Contract, and Contractor will not be obligated to provide such additional goods or services absent such amendment. Additional services will be billed at the rates set forth in Exhibit B unless otherwise agreed by the parties in writing.

6.   PAYMENT

The Contractor shall submit invoices to the County's Project Officer, who will either approve the invoice or require corrections per the terms of this Agreement. Each invoice submitted shall be a true and accurate accounting of the work performed and goods and/or services provided per the terms of this agreement. Invoices shall be paid within thirty (30) days after receipt of an invoice pursuant to the Contract and the Project Officer has not disputed in accordance with Exhibit A, MSSSA Section 3.3 (Disputes). The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

7.   REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract that are not identified in Exhibit B. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

8.   PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or

b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9.   NO WAIVER OF RIGHTS
The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

10.   NON-APPROPRIATION
All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination penalty to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

Notwithstanding the preceding paragraph, if the County terminates the Contract prior to expiration of the current Term or Renewal Term and without cause, nothing herein waives, releases or relieves the County's obligations to pay Fees, offset by any accrued Credits, for the License Term pursuant to Exhibit A, MSSSA Sections 3 and 4 and for which a Purchase Order was issued.

11.   COUNTY PURCHASE ORDER REQUIREMENT
County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

12.   REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS
The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County

in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED
During the performance of its work pursuant to this Contract:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.

C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.

D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.

E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than $10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor specifically subcontracted under this Contract.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR
During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a

statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than $10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

16.   SEXUAL HARASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

17.   TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

   A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

   1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within thirty (30) days or any other period greater than thirty (30) days specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time. Submission to and/or rejection by the

County shall not be construed as a waive or release any claims, defenses or other rights of Contractor at law or equity, nor otherwise bar or estop Contractor from pursuing any available legal or equitable remedies.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date, subject to Exhibit A, MSSSA Sections 3 (Fees and Payment) and 4 (Term, Renewal and Termination).

2. <u>Termination for Breach or Default</u>. In the event of a breach or default by Contract, the nature and effects of which are so severe that the mandatory Cure Period would cause unreasonable hardship on County, then the County may terminate immediately after written notice of termination delivered to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs by submission to the County Project Officer; however, nothing herein shall be construed as a waiver or release of any claims, defenses or other rights of Contractor at law or equity, nor otherwise bar or estop Contractor from pursuing any available legal or equitable remedies.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. <u>TERMINATION FOR THE CONVENIENCE OF THE COUNTY</u>

The County may terminate this Contract whenever the Purchasing Agent determines that termination is in the County's best interest, subject to the Termination provisions of Exhibit A (MSSSA) Section 4.3 (Termination). The County will deliver written notice to the Contractor at least sixty (60) prior to the prospective Termination date. The notice must specify the extent to which the County requests the Contract is to be terminated ("Partial Termination Request") and the effective termination date. Contractor shall determine, in its sole discretion, whether or not to grant a Partial Termination Request and, if the Contractor rejects the Partial Termination Request, the County must elect, by written notice to Contractor, to fully terminate the Contract or to continue the Contract in accordance with its unmodified terms.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

Nothing herein shall be construed as a waiver or release of any claims, defenses or other rights of Contractor at law or equity, nor otherwise bar or estop the Contractor from pursuing any available legal or equitable remedies.

C. <u>TERMINATION BY CONTRACTOR</u>

The Contractor may terminate this Agreement in whole or may terminate the separately terminable terms of Exhibits C or D, pursuant to the terms set forth in Exhibits A, C and/or D.

18. INDEMNIFICATION

A. The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County

Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, or demands resulting from, arising out of or in any way caused by the Contractor's negligent or tortious acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

B. To the extent permitted by law, the County covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the Contractors and all of its owners, officers, current and former employees, agents and trustees (collectively the "Contractor Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, or demands resulting from, arising out of or in any way caused by the County's negligent or tortious acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the County fails or refuses to fulfill its obligations contained in this section to the extent permitted by law, the County must reimburse the Contractor for any and all resulting payments and expenses, including reasonable attorneys' fees. The County must pay such expenses upon demand by the Contractor, and failure to do so may result in the Contractor withholding such amounts from any payments owed to the County under this Contract and termination of services by the Contractor.

19. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges or liability for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract. Notwithstanding the preceding, Contractor shall have no obligation to save, defend, hold harmless or indemnify any County Indemnitees if such claims, losses, damages, injuries, fines, penalties, costs, charges, liability, payments, expenses or legal fees are due to, arise from or are related to grossly negligent or willful conduct, or the modification, alteration,

derivation, reproduction or unauthorized use of the eSOPH software, documentation or other goods or services provided by Contractor, by any County Indemnitee or other County contractor, employee or agent, or in breach of Exhibits A, C and/or D (MSSSA and Addenda), or which was not otherwise expressly approved or authorized in writing by Contractor.

20.   COPYRIGHT. Contractor's eSOPH system is provided as Software-as-a-Service ("SaaS"). The County shall not obtain or receive, and shall have no right to access, the source code for eSOPH or related software tools or documentation developed by or for Contractor, or utilized by Contractor, to create, implement, test, deliver or maintain the eSOPH system (the "eSOPH Software"). The County shall have no ownership rights in or to the eSOPH Software. Nothing in this Agreement shall be construed as an assignment of copyright ownership or grant of non-terminable license to the County of the eSOPH Software

21.   OWNERSHIP OF WORK PRODUCT
This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs other than as set forth in this Agreement and the incorporated Contract Documents.

All work product, in any form, created by the Contractor solely for use by the County pursuant to this Contract and for which the County specifically pays the Contractor to create pursuant to written agreement, shall be the property of the County ("County Work Product") and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the County Work Product for any purpose other than performance of this Contract without the written consent of the County.

The County Work Product shall be treated as confidential, and the Contractor may neither release the County Work Product nor share its contents. The Contractor will refer all inquiries regarding the status of any County Work Product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all County Work Product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties to create County Work Product.

Updates, fixes, patches and other modifications or upgrades to the eSOPH Software and documentation shall be owned exclusively by the Contractor and not be considered County Work Product.

The provisions of this section will survive any termination or cancellation of this Contract.

22.   DATA SECURITY AND PROTECTION
The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this

Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to: Client Data (as defined in Exhibit A (MSSSA)); electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract; provided, however, that original information, data or records obtained from non-County parties which is obtained by County or an Applicant and incorporated into the County Information through use of Contractor's eSOPH system shall remain the property of those non-County parties. County Information does not include Platform Data. "Platform Data" shall mean any data reflecting the access or use of the Services by or on behalf of the County or any user, including statistical data, metadata, or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as logs, device, transaction data, or data based on or derived from any of the foregoing.

(a) **County's Non-Disclosure and Data Security Agreement**. The Contractor and its Designees (Contractor Designees shall include all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise having access to County Information or County computer networks to carry out the Work) must sign the NDA (Exhibits F & G) before performing any work or obtaining or permitting access to County networked resources, application systems or databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.

(b) **Use of Data**. The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by Contractor or Contractor Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information, and for any non-compliance with this provision, by Contractor or by Contractor Designees.

(c) **Data Protection**. The Contractor will protect the County's Information according to standards established by the Criminal Justice Information Services (CJIS) policy, federal law and Commonwealth of Virginia statutes including but not limited to the Government Data Collection and Dissemination Practices Act, Chapter 38 of Title 2.2 of the Code of Virginia (§ 2.2-3800 and 2.2-3803), Administration of systems including personal information; Internet privacy policy; exceptions, Code of Virginia, § 2.2-3803, and the Virginia Freedom of Information Act § 2.2-3700, et seq., and will adhere to industry best practices including the National Institute of Standards and Technology (NIST) SP 800-53 Security and Privacy Controls for Information Systems and Organizations and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. Upon request, the Contractor will provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). The Contractor will provide to the County the results of third-party information security testing and/or inspections of the Contractor's information security procedures and systems, if requested by the County. Security documentation, disaster recovery plans, testing and inspection data and any system technical information regarding the eSOPH system shall be treated as proprietary and Confidential Information, and

may not be released to any third-party, including if requested through a FOIA or similar type of request.

(d) **Security Requirements**. The Contractor must maintain up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services shall be limited to secure devices and systems which meet CJIS standards and as further set forth in Exhibit A (MSSSA) Section 5 (Data Access, Confidentiality and Security) and Exhibits C and D (Addenda to MSSSA).

(e) **Conclusion of Contract**. Subject to the provisions of Exhibit A (MSSSA) Sections 3 (Fees and Payment), 4 (Term, Renewal and Termination) and 5 (Data Access, Confidentiality and Security), and Exhibits C and D (Addenda to MSSSA), within thirty (30) days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County, in a format defined by the County Project Officer and of which is within the normal operating capabilities of the eSOPH system. Subject to the limitations of Exhibit A (MSSSA) Sections 3 (Fees and Payment), 4 (Term, Renewal and Termination) and 5 (Data Access, Confidentiality and Security), and Exhibits C and D (Addenda to MSSSA), the County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its subcontractors or agents subject to return and/or destruction. The Contractor must certify completion of this task in writing to the County Project Officer.

(f) **Notification of Security Incidents**. The Contractor shall notify the County Chief Information Officer and County Project Officer of any Security Incident pursuant to Exhibit A (MSSSA) Section 5.5 (Security Incident).

(g) **Subcontractors**. If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

Notwithstanding the preceding minimum standards, the County agrees that Contractor's adherence to the data security provisions described in Exhibit A (MSSSA) Sections 2 (eSOPH System License and Support Services) and 5 (Data Access, Confidentiality and Security), and Exhibits C and D (Addenda to MSSSA), meet or exceed the minimum Security Requirements required under this Agreement.

The county agrees that Section 5.4 and 5.7 of the attached Miller Mendel MSSSA does not conflict with any of the terms or requirements in this Section (22), and terms 5.4 and 5.7 of the MSSSA are accepted.

23. **ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

24. **COUNTY EMPLOYEES**

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

25. **FORCE MAJEURE**

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

26. **AUTHORITY TO TRANSACT BUSINESS**

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

27. **RELATION TO COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

28. **REPORT STANDARDS**

The Contractor must submit all written reports required by this Contract for advance review in a format approved in advance by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, printed reports must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers

- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

29.   AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

30.   ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract (a "Transaction") without the prior written consent of the County; however, if the County does not consent to such Transaction then the County's sole remedy is to terminate this Contract pursuant to the termination for convenience provisions. The County shall have no right to block, delay, impose conditions upon or otherwise hinder such transaction.

31.   AMENDMENTS

This Contract, and including Exhibits A (MSSSA), C (MSSSA Addendum for SIS) and D (MSSSA Addendum for Experian Services), may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

32.   ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

33.   DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. Except as provided in Exhibit A (MSSSA) Section 4 (Term, Renewal and

Termination), the Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

34.   APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

35.   ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

36.   NONEXCLUSIVITY OF REMEDIES

All remedies available to the parties under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

37.   NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

38.   SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect. Notwithstanding the preceding, each of Exhibit A (MSSSA), Exhibit C (Addendum for SIS) and Exhibit D (Addendum for Experian Services) is integral and necessary to the construction and performance of this Agreement, such that any finding by a court of competent jurisdiction that any of these Contract Documents, to the extent they are incorporated into this Agreement, are invalid or unenforceable, in whole or in part, then the Contract shall automatically terminate.

39.   SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, including but not limited to Exhibit A (MSSSA) Section 4.5 (Survival), the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND DATA SECURITY AND PROTECTION.

40.   HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

41.   AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

42.   NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a

delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:
Tyler Miller, President & CEO
Miller Mendel, Inc.
1425 Broadway, #430
Seattle, Washington 98122
Phone: (306) 333-4922
Email: tjm@MillerMendel.com

TO THE COUNTY:
Igor Scherbakov, Project Officer
Arlington County Police Department, SMD
1425 N Courthouse Rd, 7th floor
Arlington Virginia 22209
Phone: (703) 228-0709
Email: ischerbakov@arlingtonva.us

AND

Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

43. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

44. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

45. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the

coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

a. <u>Workers Compensation</u> – For any employees of Contractor who regularly travel to Arlington County, Virginia, to perform work under this Contract, Contractor shall maintain Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of $100,000/100,000/500,000. Otherwise, the Contractor shall comply with the workers' compensation coverage laws of the applicable state laws in which the Contractor's offices is/are located. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.

b. <u>Commercial General Liability</u> - $1,000,000 per occurrence, with $2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.

c. <u>Business Automobile Liability</u> - $1,000,000 combined single-limit (owned, non-owned and hired).

d. <u>Cyber Liability</u> - $1,000,000 per occurrence.

e. <u>Professional Liability</u> - $1,000,000 per occurrence.

f. <u>Additional Insured</u> – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.

g. <u>Cancellation</u> - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

h. <u>Claims-Made Coverage</u> - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.

i. <u>Contract Identification</u> - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.
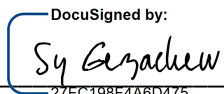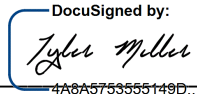
46. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

MILLER MENDEL, INC.

AUTHORIZED
SIGNATURE: _____Sy Gezachew_____
27FC198F4A6D475...

NAME: __Sy Gezachew_____

TITLE:___PROCUREMENT OFFICER_____

DATE:___7/15/2021_____

AUTHORIZED
SIGNATURE: _____Tyler Miller_____
4A8A5753555149D...

NAME: __Tyler Miller_____

TITLE: ___CEO_____

DATE: ___7/14/2021_____

EXHIBIT F

NONDISCLOSURE AND DATA SECURITY AGREEMENT
(CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of Miller Mendel, Inc. ("Contractor"), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 21-POL-SLA-615 (the "Project" or "Main Agreement") or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of County Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual, including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or anything that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution. County Information does not include Platform Data.

Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of County information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. The Contractor acknowledges that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Project. The Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate and tightly controlled and that such person/s also maintain the security and privacy of County Information and the integrity of County-networked resources.

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any device or media on which County Information is stored, even temporarily, will have strict security and access control. Any County Information that is accessible will not leave Contractor's work site or the County's physical facility, if the Contractor is working onsite, without written authorization of the County

Project Officer. If remote access or other media storage is authorized, the Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County and connected to the County network, are secure and free of all computer viruses, or running the latest version of an industry-standard virus protection program. The Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. The Contractor will not download any County Information except as agreed to by the parties and then only onto a County-approved device. The Contractor understands that downloading onto a personally owned device or service, such as personal e-mail, Dropbox, etc., is prohibited.

Contractor agrees that it will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. The Contractor will fully cooperate with the County to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees to promptly notify others of a suspected or actual breach if requested.

The Contractor agrees that all duties and obligations enumerated in this Agreement also extend to its employees, agents or subcontractors who are given access to County information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by the Contractor. The Contractor agrees that it shall take all reasonable measures to ensure that its employees, agents and subcontractors are aware of and abide by the terms and conditions of this agreement and related data security provisions in the Main Agreement.

It is the intent of this *NonDisclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices in place to ensure confidentiality, protection, privacy and security of County information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *NonDisclosure and Data Security Agreement* conflicts with the Main Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

The County has reviewed Sections 5.3, 5.4 and 5.7 of the attached Miller Mendel Master Software Subscription Services Agreement (MSSSA), and has found no term within Sections 5.3, 5.4 and 5.7 violates the terms and conditions of this Nondisclosure and Data Security Agreement [Contractor].

At the conclusion of the Project, the Contractor agrees to return all County Information to the County Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the Main Agreement.

Authorized Signature: _____

Printed Name and Title: _____

Date: _____

EXHIBIT G

NONDISCLOSURE AND DATA SECURITY AGREEMENT
(INDIVIDUAL)

I, the undersigned, agree that I will hold County-provided information, documents, data, images, records and the like confidential and secure and protect it against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers, and property as well as information that the County shares with my employer or prime contractor for testing, support, conversion or the provision of other services under Arlington County Agreement No. 21-POL-SLA-615 (the "Project" or "Main Agreement") or which may be accessed through County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

I agree that I will maintain the privacy and security of County Information and will not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized to do so by the County Project Officer. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, or that otherwise affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

I agree that I will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly authorized and associated with my designated duties on the Project. I understand and agree that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal law/s, subjecting me and/or my employer to civil and/or criminal penalties.

I also agree that I will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person for any purpose of the Information obtained directly, or indirectly, as a result of my work on the Project. I agree to view, retrieve or access County Information only to the extent concomitant with my assigned duties on the Project and only in accordance with the County's and my employer's access and security policies or protocols.

I agree that I will take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. I will also ensure that any device or media on which County Information is stored, even temporarily, will have strict security and access control and that I will not remove, facilitate the removal of or cause any Information to be removed from my employer's worksite or the County's physical facility without written authorization of the County Project Officer. If so authorized, I understand that I am responsible for the security of the electronic equipment or paper files on which the Information is stored and agree to promptly return such Information upon request.

I will not use any devices, laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices ("Device") during my work on the Project without pre-approval. I will ensure that any Device connected to the County network is free of all computer viruses or running the latest version of an industry-standard virus protection program. I will also ensure that my password, if any, is robust, protected and not shared. I will not download any County Information except as authorized by the County Project Officer and then only onto a County-approved Device. I understand that downloading onto a personally-owned Device or service, such as personal e-mail, Dropbox etc., is prohibited.

I agree that I will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. I will fully cooperate with the County to help regain possession of any County Information and to prevent its further disclosure, use or dissemination.

It is the intent of this *NonDisclosure and Data Security Agreement* to ensure that the highest level of administrative safeguards and best practices are in place to ensure confidentiality, protection, privacy and security of County Information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *Nondisclosure and Data Security Agreement* conflicts with the underlying Main Agreement or any local, state or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

The County has reviewed Sections 5.3, 5.4 and 5.7 of the attached Miller Mendel Master Software Subscription Services Agreement (MSSSA), and has found no term within Sections 5.3, 5.4 and 5.7 violates the terms and conditions of this Nondisclosure and Data Security Agreement [Individual].

Upon completion or termination of my work on the Project, I agree to return all County Information to the County Project Officer. I understand that this agreement remains in full force and effect throughout my work on the Project and shall survive my reassignment from the Project, termination of the above referenced Project or my departure from my current employer.

Signed: _____

Printed Name: _____

Date: _____

Witnessed:

Contractor's Project Manager: _____

Printed Name: _____

Date: _____

TO BE COMPLETED PRIOR TO BEGINNING WORK ON THE PROJECT

MASTER SOFTWARE SUBSCRIPTION SERVICES AGREEMENT

This Master Software Subscription Services Agreement (this "**Agreement**") is made and entered into on the last date signed below ("**Effective Date**") between **Miller Mendel, Inc.**, a Washington corporation with an address at 1425 Broadway, #430, Seattle, WA 98122 ("**MMI**"), and Arlington County, by and through the Arlington County Police Department, with an address at 1425 N Courthouse Rd., Arlington, VA 22201 ("**Client**"). MMI and Client may each be referred to individually as a "**Party**" or collectively as the "**Parties**."

BACKGROUND

A. MMI is a technology company with a principal market in offering software subscription services to governmental and private entities;

B. Client desires to subscribe and use MMI's software system known as the "eSOPH" or "electronic Statement Of Personal History." The eSOPH System (defined below) is a web-based software system designed and developed to assist with pre-employment background investigations. The eSOPH System allows Client to manage pre-employment background investigations of persons who apply for employment with Client.

C. MMI is willing to allow Client and its Applicants to use the eSOPH System in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties, each intending to be legally bound hereby, do promise and agree as follows:

AGREEMENT

1. **DEFINITIONS.** Except for the terms defined below, all initially capitalized terms used in this Agreement will have the meanings described within the text of this Agreement. As used herein, the following terms have the following defined meanings:

1.1 "*Applicant*" means a registered end-user that accesses the eSOPH System at the request of a Client to input or upload data or documents for the purpose of Client's management of one or more pre-employment background investigations.

1.3 "*Applicant Data*" means any data transmitted by Applicant to the eSOPH System.

1.4 "*Authorized User*" means any user, excluding Applicant(s), who accesses the eSOPH System on behalf of Client. For Clients within California and participating in the California Commission on Police Officer Standards and Training ("POST"), "Authorized User(s)" also includes Authorized Users from POST.

1.5 "*Available*" means that the eSOPH System is: (a) available and accessible for use via the web-based interface provided by MMI, provided that Client has an operational Internet connection and all compatible hardware and software, including web browsers, required to access and use the eSOPH System; and (b) functioning in substantial compliance with the Master Agreement and the Documentation.

1.6 "*Availability*" shall have the meaning described in Section 2.14 (Availability Standards).

1.7 "*Client*" means the entity stated in the first paragraph at the top of this page, licensed to use the eSOPH System in accordance with the terms and conditions of this Agreement.

1.8 "*Client Data*" means all data and other information uploaded or transmitted to or keyed into the eSOPH System by Client or an Applicant.

1.9 "*Client Specific Terms*" means the terms and conditions specific to Client included in a Quote.

1.10 "*Defect*" means a failure of eSOPH System to substantially conform to the functional specifications set forth in the Master Agreement or the Documentation.

1.11 [Deleted].

1.12 "*Documentation*" means any training materials, product descriptions, technical descriptions, flow charts, or other written or other tangible documentation provided or made available to Client by MMI that describes or depicts the functionality of the eSOPH System.

1.13 "*Entry*" has the meaning ascribed to it in Section 2.3.2.

1.14 "*eSOPH System*" means MMI's "electronic Statement Of Personal History" web-based software system designed and developed to assist with pre-employment background investigations, and all related Software. The eSOPH System allows MMI's clients to manage pre-employment background investigations of persons who apply for employment and volunteer positions with Client.

1.15 "*Intellectual Property Rights*" means all intellectual property rights throughout the world, whether existing under intellectual property, unfair competition or trade secret laws, or under statute or at common law or equity, including but not limited to: (i) copyrights, trade secrets, trademarks, trade names, patents, inventions, designs, logos and trade dress, "moral rights," mask works, rights of personality, publicity or privacy, and any other intellectual property and proprietary rights; and (ii) any registration, application or right to apply for any of the rights referred to in this clause; and (iii) any and all renewals, extensions and restorations thereof, now or hereafter in force and effect.

1.16 "*Subscription Term*" shall have the meaning given in Section 4.1 (Term).

1.17 "*Subscription Year*" shall mean the twelve (12) month period following the Effective Date and the twelve (12) month period following each anniversary of the Effective Date.

1.18 "*Administrative User*" means an Authorized User of Client's choosing listed on the Exhibit A who is authorized to grant initial eSOPH System login and password credentials to another Authorized User to access and use the eSOPH System and either (a) has completed an initial training session provided by MMI on or around the Setup Date or (b) is a successor designated by Client and qualifies in accordance with Section 2.6 (Administrative Users).

1.19 "*Quote*" means the written quotation delivered by MMI to Client, prior to entering this Agreement, for all Subscription Fees, Setup Fees and Support Services and other costs and fees agreed by the Parties, applicable during the Subscription Term. Each Quote agreed to by the Parties is hereby incorporated into this Agreement, and the terms of the current Quote are hereby made material terms of this Agreement which shall supersede any conflicting prior terms.

1.20 "*Renewal Term*" shall have the meaning given in Section 4.2 (Renewal). "Subscription Term" may be used interchangeably with "Renewal Term", and the terms shall be interpreted to have the same effect and application, unless expressly stated otherwise.

1.21 "*Security Incident*" means an unauthorized third party gaining access to Client Data in MMI's storage, possession, or care if it was accessed in unencrypted readable form and either (a) it creates a substantial risk of harm to Client or any individual(s) or (b) applicable law requires notification to individuals' whose personal information was accessed.

1.22 "*Services*" means, collectively, the provision of the eSOPH System in accordance with the Section 2.9 (Support Services), related professional services, and any other services to be provided by MMI to Client pursuant to this Agreement.

1.23 "*Service Credit*" means a credit or refund issued pursuant to Section 2.14.2 (Uptime Guarantee; Remedies for Excessive Downtime) for failure to meet the Availability standards set forth in Section 2.14 (Availability Standards).

1.24 "*Setup Date*" means the day of activation and setup of Client's access to the eSOPH System, which will occur on the first day of training unless otherwise specified and agreed to in writing by the Parties.

1.25 "*Software*" means the eSOPH System, related proprietary software owned by MMI, and any third-party software required to operate the eSOPH System, all in machine readable, object code form, together with all enhancements, modifications, corrections and amendments thereto.

1.26 "*Software Fees*" means fees paid for Entries, licensing fees for access to the eSOPH System, and any fees paid for maintenance and support allocable to a given calendar month. Such fees that are paid on an annual basis shall be pro-rated (e.g., fees paid for a Subscription Term shall be divided by 12 to determine the monthly amount) Software Fees allocable to a given month. Software Fees excludes fees paid for professional services (e.g., training, customization, set-up, or installation) and fees paid for corrective work outside the scope of the Support Services described in Section 2.9 (Support Services).

1.27 "*Support Request*" means a written request for resolution of a Defect submitted by Client to MMI.

1.28 "*Support Services*" means the support and maintenance services described in Section 2.9 (Support Services).

1.29 "*Total Authorized Cost*" shall have the meaning given in Section 3.6 (Total Contract Cost Authorized).

2. eSOPH SYSTEM LICENSE AND SUPPORT SERVICES

2.1 **License Grant**. MMI, by this Subscription, hereby grants to Client a revocable, limited license to access and use the eSOPH System commencing on the Setup Date and for the remainder of the Subscription Term in accordance with the terms and conditions of this Agreement. MMI will provide the eSOPH System to Client in accordance with the Quote for the then-current Subscription Term and terms of this Agreement (or any applicable successor Agreement).

2.2 **Authorized User Designation.** Client shall designate all current Administrative Users of the eSOPH System in accordance with Section 2.6 (Administrative Users). A current Administrative User may grant System access to additional Authorized Users. Client shall ensure its Authorized Users' compliance with the terms of this Agreement, and Client assumes and accepts all responsibility and all liability for each of Client's Authorized Users, and any user whom the Client, or Client's Authorized Users, grants eSOPH System access, including all their acts or omissions while accessing and using the eSOPH System and/or any information obtained through such access and use.

2.2.1 **Outside Agency Access**. THIS TERM APPLIES ONLY IF CLIENT IS WITHIN THE STATE OF CALIFORNIA: At Client's written request, MMI may grant system access for designated external auditor(s) or reviewing entities ("Outside Agency"). These users are considered Authorized Users as defined in Section 1.4. The access will allow the Outside Agency to access certain eSOPH Client Data within the specific Client's eSOPH system. Such requests are subject to MMI's approval of the Outside Agency. MMI reserves the right to decline such requests at its sole discretion. Client shall be solely responsible for ensuring compliance with all applicable legal requirements for the Outside Agency's access, to include necessary authorizations and waivers. Granting Outside Agency access to Client's eSOPH system may be subject to additional fees, as reflected in a Quote provided to and accepted by Client. If a fee applies, the new Authorized User(s) from the Outside Agency will be added into the eSOPH System per Client's request after a purchase order is received by MMI reflecting acceptance of the applicable fees. After MMI has added the Outside Agency Authorized User's access to the eSOPH System for Client's account, the new Authorized User will have access to view Client's Data on designated Applicants. Client may revoke an Outside Agency's or specific Outside Agency Authorized User's access by submitting a written request to MMI.

2.2.2 **Outside Agency Access: Limitation of Liability.** THIS TERM APPLIES ONLY IF CLIENT IS WITHIN THE STATE OF CALIFORNIA: For any Outside Agency granted access pursuant to Client's written request, Client shall be solely responsible for all acts, errors, omissions and/or any damage or harm arising from or related to the Outside Agency's access to the eSOPH system, and MMI shall have no liability

to Client relating to such access, including but not limited to any delay in MMI terminating such access after receiving Client's request to terminate the Outside Agency's access.

2.3   Set-Up and Use of the eSOPH System.

2.3.1   Upon execution of this Agreement by both parties and MMI's receipt of a purchase order issued by Client in accordance with Section 3 (Fees and Payments), MMI will commence work with Client to establish Client's account on the eSOPH System and provide in-person setup and training for Client's access and use of the eSOPH System.

2.3.2   For each Applicant, an Authorized User (with appropriate permission levels set in the eSOPH System), must create an entry method into the eSOPH System for the Applicant. One method is by entering the Applicant's legal name and other identifying information into the eSOPH System. This is considered an "Entry." An Authorized User, may then grant access to the eSOPH System to the Applicant, who may use it to submit information to assist Client in executing its background investigation of such Applicant. The second entry method is for an Authorized User to create an access code within the eSOPH System. The access code, if given out to Applicants, will allow those Applicants with the access code to access the system with no further data entry by any Authorized User. The Applicant(s) then has/have access to the eSOPH System to submit information to assist Client in executing its background investigation of such Applicant(s). Each Applicant who accesses the system via the access code option will also be considered an "Entry". Any Authorized Users may access and use the eSOPH System for the purpose of adding information, and accessing and reviewing information submitted by Applicant(s). Any Authorized User, including Applicants, must be capable of entering into legally binding agreements.

2.3.3   If Client desires to have Authorized Users under the age of 18 access and use the eSOPH System, Client will, at Client's sole expense and risk, provide a legally sufficient release agreement to be executed by the minor's legal guardian(s), prior to the minor's access to the eSOPH System. The release must include language legally sufficient to hold MMI harmless and release MMI of all liability. Client agrees it is solely responsible, and will retain all executed release agreements, and will provide MMI a fully legible copy of the requested release agreement(s), if so requested by MMI, within five calendar days of MMI's request. Client is solely responsible for researching and complying with all laws regarding a minor's access to and use of the eSOPH System. Client agrees to defend, indemnify and hold MMI harmless from all claims and damages relating to a minor's use of the eSOPH system.

2.4   Restrictions on Use.

2.4.1   Except as expressly permitted below, Client (including its Authorized Users) is strictly forbidden from entering at any time fictitious data (e.g., names, social security numbers, addresses, phone numbers or other data) into the eSOPH System for "testing," "training," or any other purpose. MMI reserves the right to invoice Client at MMI's then-standard hourly rate, for the removal of any fictitious data entered by any Authorized User. MMI will provide to Client a "fake" applicant name and the other information necessary to conduct training and testing with its Authorized Users, at Client's request. MMI will remove the "fake" applicant from the eSOPH System, after requested by Client, at completion of Client's testing or training.

2.4.2   Client may use the eSOPH System only to aid in pre-employment background investigations for those Applicants who have applied for employment or a volunteer position within the Client's specific government agency (e.g., state government, township, county, city, and village). Client may not use the eSOPH System on behalf of other government agencies or entities. MMI reserves the right to invoice Client all fees equivalent to if the other entity were a direct Client of MMI. Client agrees to pay the fees in accordance with Section 3 (Fees and Payments).

2.5   Acknowledgment of Ownership and Limited License Rights. As between MMI and Client, MMI is the sole and exclusive owner of the eSOPH System (including all updates), Documentation, and all Intellectual Property Rights associated therewith. The eSOPH System is licensed not sold, to Client. Client shall have only the rights specifically granted by MMI under this Agreement. No additional rights are granted or may be

inferred. Client shall not: (i) make any modifications to any portion of the eSOPH System to which it is not intended to have access, via the user interface; (ii) attempt to reverse engineer, disassemble, reverse translate, decompile, decode or copy any portion of the eSOPH System; (iii) remove any patent, trademark, service mark or copyright notices which MMI places on the eSOPH System; or (iv) take any other actions inconsistent with the limited rights granted by this Agreement.

   2.5.1 Client shall immediately notify MMI of any activity to which it becomes aware which may constitute infringement or attempted infringement of MMI's rights in and to the eSOPH System, including violations of intellectual property law(s). Client shall provide MMI with all reasonable assistance necessary or desirable for MMI to protect any of its rights, including without limitation its Intellectual Property Rights, in connection with the eSOPH System and agrees, upon written request from MMI, to furnish any and all records and information regarding the party suspected of infringement.

  2.6 **Administrative Users**. Client shall designate one person as their Primary Administrative User on Exhibit A, which is hereby incorporated into this Agreement. Client may designate additional Administrative Users authorized to contact MMI for Support Requests pursuant to Sections 2.9 (Support Services) and 2.10 (Support Request Requirements). As described within this Agreement, the person(s) listed in the Exhibit A are the only representatives of Client authorized to contact and submit support requests to MMI, and they are responsible for troubleshooting all Authorized User and Applicant issues prior to submitting support requests to MMI. Client is responsible for maintaining a current list of the Administrative User(s) with MMI, and must notify MMI within 48 hours of any change in an Administrative User by providing MMI an updated Exhibit A listing all of Client's Administrative Users. Client shall be responsible for training replacements for any of Client's Administrative Users. If Client requests MMI provide replacement training, such training shall be provided at MMI's then-standard rates for training. Client shall pay MMI's then standard hourly rate for support and assistance provided to Administrative Users necessitated from Client's failure to designate a properly trained person as an Administrative User.

  2.7 **System Updates**. The eSOPH System may be updated on an as-needed basis by MMI or MMI contracted service providers. Client may need to update its Internet browsers, connections, Internet service, and some hardware from time to time to permit ongoing compatibility with the eSOPH System.

  2.8 **Sample Forms.** The scope, content, format and other details of information and materials requested from Applicants through eSOPH as well as the forms and fields used to collect such information are within the exclusive control of Client and its Authorized Users. Any default or sample forms or fields provided or pre-loaded on the eSOPH System ("**Sample Forms**") are provided by MMI "as is" with no warranty of any kind, express or implied. If Client uses such Sample Forms, Client does so at Client's own risk, and Client is solely responsible for evaluating such Sample Forms' suitability for Client's purposes and making any necessary or appropriate changes, including without limitation changes required for compliance with laws and regulations that apply to Client.

  2.9 **Support Services**. MMI shall provide the following services (the "Support Services") with respect to the eSOPH System:

   2.9.1 MMI will use its commercially reasonable efforts to: (i) maintain the eSOPH System so that it operates without Defects; (ii) host and make the eSOPH System Available at all times excluding Scheduled Downtime; and (iii) cure or minimize the adverse impact of any Defect as soon as is reasonably practicable after such Defect is reported in accordance with this Section 2.9 (Support Services).

   2.9.2 Subject to Client's maintaining suitable environments and systems that are compatible, MMI shall provide, install, and implement, as they become available, any bug fixes of the eSOPH System that are provided by MMI free of additional charge to all licensees of the eSOPH System.

   2.9.3 *Excluded Services*. The Support Services do not include any of the following: (a) configuration of other applications required to access eSOPH System, including, but not limited to Client's internet service, operating systems, firewalls, or networking components; (b) Client's ongoing training needs; (c) any version upgrades of Client's 3rd party software used in connection with the eSOPH System; (d) enhancements, modifications, or customization to the eSOPH System performed at the Client's request and not intended to resolve

a Defect; (e) any version or release of the eSOPH System that MMI may issue as a separate edition, including an alternative or premium version of eSOPH System for which additional fees may be required to access; or (f) resolution of Defects caused by any of the events described in Section 2.13 (Exclusions), below.

      2.9.4 *MMI Support Hours*. MMI will provide support as outlined in this Agreement 365 days a year, 24 hours a day.

      2.10 **Support Request Requirements**. Client must comply with all of the following requirements as a condition to receiving Support Services:

      2.10.1 Attempted Resolution by Administrative User(s). Client's Administrative User(s) shall act as the first line of support to troubleshoot any Defects experienced by Applicants and Authorized Users. Only when an Administrative User cannot resolve the Defect should a Support Request be submitted to MMI. If a Defect is reported to MMI that an Administrative User, based on the initial training provided by MMI concurrent with setup of Client's account to access the eSOPH Platform, should have been able to resolve without MMI's assistance, MMI may refer such Defect back to Client's Administrate User(s) for resolution.

      2.10.2 Submission by Administrative User(s). All Support Requests must be submitted by and through one of the Administrative Users on Client's most current Designation Form (Exhibit A). MMI is not required to respond to or resolve any Support Request that is submitted by a person other than a current Administrative User.

      2.10.3 Information Required in Support Request. Each Support Request must include the following information, at a minimum ("Minimum Required Information"):

      (a)   Client's reasonable, good faith classification of the priority (High, Medium, or Low) of the reported Defect in accordance with the priority levels and definitions contained in Section 2.12 (Resolution Targets and Priority Levels), below, with explanation;

      (b)   Names of Applicants, References and Authorized Users involved with clear notation of their title;

      (c)   Date and time of each occurrence;

      (d)   Computer operating system used by party experiencing the defect;

      (e)   Name of internet browser and version;

      (f)   Specific steps to allow MMI personnel to recreate the issue;

      (g)   Exact wording of any error message received, URL or name of page it was received on, or a screen shot of the error;

      (h)   A description of all steps previously completed to resolve the defect; and

      (i)   If MMI has permission to contact the party directly, if needed. Include contact information.

      2.10.4 *Additional Information*. In addition to the Minimum Required Information listed above, Client shall promptly provide MMI with such other information, files, and records related to the Defect that MMI reasonably requests.

      2.10.5 *Access to Systems*. Subject to Client's applicable security requirements, Client shall provide MMI with access to and use of all systems and environments determined necessary by MMI to provide timely Support Services pursuant to these terms. If Client is unable to provide access, the Parties agree MMI may decline to fix the defect if a reasonable alternative is not available to MMI.

      2.11 **Response Times**. MMI shall provide an initial response acknowledging each complete and validly submitted Support Request no later than 1 business day after it is received.

    2.12   **Resolution Targets and Priority Levels**. MMI will prioritize resolution of Defects according to their severity, and not necessarily based on the order in which they were reported. Defects reported in Support Requests shall be classified using the priority levels and definitions set forth in the Table 2.12 (Priority Levels), below. Although Client is required to propose a priority level in its Support Request, MMI may reclassify the priority level of a Defect in its sole reasonable discretion, and such determination by MMI shall be final and controlling. MMI shall use its best commercially reasonable efforts to cure Defects within the target resolution times set forth in Table 2.12 (Priority Levels), which periods of time shall commence when a Support Request containing all Minimum Required Information is submitted. MMI shall have no obligation to respond to or resolve a Support Request (other than notifying Client that the Support Request is incomplete) unless and until all Minimum Required Information is provided. "Priority Levels" are defined in the following Table 2.12 (Priority Level

TABLE 2.12

PRIORITY LEVELS

Priority	Description	Target Resolution Time
High: Complete outage or severe impact to Client's business function	A Defect is High priority if it (a) prohibits utilization of some or all functionality of the eSOPH System by all or most Authorized Users or Applicants; (b) has a serious potential impact to Client's business (e.g., an impacted business function is halted completely); *and* (b) no reasonably effective workaround is available.	24 hours
Medium: Partial outage or a workaround available	A Defect is Medium priority if it has a moderate impact on Client's business or it has a potentially serious impact but a reasonably effective workaround is available. For example, a Defect would have Medium priority if it only a small group of Authorize Users or Applicants are affected, or an impacted business function is not halted completely but is merely inconvenienced, or the issue can otherwise be circumvented by a reasonably effective and available workaround (e.g., use of a different web browser), other work functions can be completed in the meantime.	3 Business Days
Low: Cosmetic Issue, cosmetic defect	A Defect is Low priority it is merely cosmetic or has a negligible impact to Client's business functions, or other work functions can be completed in the meantime.	10 Business Days

    2.13   **Exclusions**. MMI shall not be responsible for resolving and expressly disclaims liability and responsibility for lack of Availability or Defects to the extent caused by any of the following:

    2.13.1 Client's negligence, abuse, misapplication, misconfiguration, or misuse of eSOPH System, including use of the eSOPH System in violation of the Master Agreement or any written instructions provided by MMI to Client from time to time;

    2.13.2 Use of eSOPH System with any hardware, operating system version or network environment that is not supported by MMI, or other problems resulting from defects in Client's or a third party's software or hardware; or

    2.13.3 Problems with Client and/or its Authorized Users' telecommunications systems, Client and/or its Authorized Users' internet service provider, or the public internet to the extent affecting internet

performance on a general basis (e.g., such as a regional outage), natural disasters, denial of service attacks, acts of terrorism, labor strikes, any other force majeure event, or any other event reasonably beyond MMI's control.

2.14 Availability Standards

2.14.1 *Scheduled Downtime*. MMI shall strive to avoid and minimize disruptions to the availability and functioning of the eSOPH System. The eSOPH System may be unavailable for scheduled backup and system maintenance ("**Scheduled Downtime**") during off-peak hours between the hours of 22:00 and 03:00 am PST (the "**Maintenance Window**"). On a limited and discretionary basis, MMI may adjust the Maintenance Window to occur between the hours of 19:00 and 03:00 am Pacific Time by providing Client with at least 24 hours' notice posted on the log-in screen of the eSOPH System. MMI shall use its best commercially reasonable efforts to schedule all planned downtime during such Maintenance Window. If emergency maintenance must be performed on the eSOPH System which, in MMI's sole discretion, cannot wait until the normal Maintenance Window, MMI will promptly notify Client of such lack of Availability (in advance, if possible) and undertake reasonable commercial efforts to minimize the impact and duration of any such maintenance activity. Any such downtime for maintenance occurring outside the Maintenance Window shall not be deemed Scheduled Downtime for purposes of calculating the Availability percentage described in Section 2.14.3, below.

2.14.2 *Uptime Guarantee; Remedies for Excessive Downtime*. MMI shall provide Availability of the eSOPH System at least 99% of the time, excluding Scheduled Downtime and lack of Availability caused by the events described in Sections 2.13 and 2.14.3. In the event the Availability of the eSOPH System falls below 99% in any calendar month, MMI will issue to Client a service credit ("**Service Credit**") in the form of additional Entries equal to the percentage of Entries purchased by Client for the calendar month (Entries per current Subscription Term divided by the total months in the respective Subscription Term) set forth in the table below corresponding to the actual Availability of the Software. To receive Service Credits, Client must submit a written request to MMI within fifteen (15) days after the end of the calendar month in which the eSOPH System failed to achieve 99% Availability, or Client's right to receive Service Credits with respect to such unavailability will be waived by Client. The remedies stated in this Section are Client's sole and exclusive remedies and MMI' sole and exclusive obligations for service interruption or lack of Availability.

2.14.3 Availability is measured by the following formula: $x = (n - y) * 100 / n$

where: "x" is the Availability percentage; "n" is the total number of hours in the given calendar month minus Scheduled Downtime; and "y" is the total number of downtime hours exclusive of Scheduled Downtime and downtime caused by the events set forth in Section 2.13 (Exclusions) in the given calendar month.

TABLE 2.14
DOWNTIME FEE CREDIT

Availability	Percentage of Monthly Software Fees Credited
> 99.0%	0%
95.0% - < 99%	3%
90.0% - < 95.0%	5%
80.0% - < 90.0%	10%

3. FEES AND PAYMENT

3.1 Subscription, Setup and Support Fees. Client will pay to MMI the amounts for the applicable Subscription Term or Renewal Term in accordance with this Section 3 (Fees and Payments) for the duration of the applicable Subscription Term or Renewal Term. All payments made to MMI by Client will be in USD.

3.1.1 *Client Set-up*. Upon receipt of this fully executed Agreement and Client's purchase order, MMI will begin the set-up process of Client on the eSOPH System in accordance with the terms of the

Agreement. If Client requests the setup date and time be changed from what was originally stated by Client, Client is responsible for reimbursing MMI for all costs MMI incurs in making the travel arrangement adjustments. Additionally, Client will also be responsible for paying a $200.00 travel arrangement change fee to MMI. MMI will provide records showing the costs MMI incurred.

3.1.2 *Subscription and Support*. Client shall be invoiced annually for Support Fees as set forth in Table 3.2 (Subscription Term Fees and Credits).

3.1.3 *Additional Training*. After the initial training (up to two days/16 hours) has been completed, additional training requested by Client will be billed to Client at a rate of $200.00 USD per hour. Additional *onsite* training will be billed at a minimum of 8 hours, plus travel, meal and lodging expense accommodations which are reasonable under government agency standards and practices. Requests must be received by MMI in writing from an Administrative User listed on Exhibit A, or higher authority. MMI reserves the right to charge $200.00 USD per hour for all off-site/remote training, with a one-hour minimum.

3.1.4 *Corrective Services*. MMI reserves the right to Invoice Client $200.00 USD per hour for any corrective services Client requests. Corrective Services are typically services needed by Client from MMI to correct a mistake made by Client's Authorized Users, which cannot be corrected by Client through the User Interface. Requests must be received by MMI in writing from an Administrative User listed on the Exhibit A, or higher authority. A one-hour minimum will be charged for Corrective Services performed by MMI, which do not require travel. Corrective Services which requires MMI to travel will be billed at $200.00 USD per hour, with an eight (8) hour minimum charge, plus all costs and expenses.

3.1.5 *Entries.*

(a) Client will be invoiced for Entries, as listed in Table 3.2 (Subscription Term Fees and Credits) immediately following MMI adding the Entries to the Client's account. Client may purchase additional Entries one time at the then-current rate during the active Subscription Term without incurring an administrative fee. Entries added thereafter during a given Subscription Term will automatically incur an additional twenty percent (20%) administrative fee in addition to the per-Entry fee. If the purchase is for 300 or more Entries, the administrative fee will be waived.

(b) Client may carry over Entries from a prior Subscription Year which were paid for but not used to the following Subscription Year, but only when eligible. To be eligible, MMI must receive full payment of any outstanding balances and a written request for the used Entries to carry over the new Subscription Year. The written request must be received by MMI at least five (5) business days prior to the current Subscription Year's expiration.

(c) *Fixed-Price Entries*. Client may elect to purchase an agreed number of Entries at an agreed fixed price for future Subscription Years as listed in Table 3.2 (Subscription Term Fees and Credits), below, in which case Client shall be obligated to pay the annual invoices for the agreed number of Entries (listed in Table 3.2) as they come due each Subscription Year, for the duration of the Subscription Term or any Renewal Term, as applicable.

(d) *Non-Fixed-Price Entries*. If Client does not elect to purchase an agreed number of Entries for future Subscription Years, then pricing of Entries will be subject to MMI's then-standard rate for Entries.

3.1.6 *Data Storage Overage*. Data storage used in in excess of the "Storage Credit" listed in Table 3.2 (Subscription Term Fees and Credits), or in an accepted Quote, will be invoiced at the price listed on the most current Quote Client has accepted for the applicable Subscription Year. Invoicing intervals for Data Storage fees will be set at the discretion of MMI, but not more often than every three (3) months. Data storage is calculated by the space used by Client on the main production system(s) only; space used for backups is not invoiced. Due to time zone differences, data usage calculations may vary by up to three hours. Client may *not*

carry over credit for Data Storage not used during a Subscription Year. Archive data storage used by Client (subject to availably) will be invoiced at the price listed on the most current Quote Client has accepted.

    3.1.7 *Fee for Administrative User(s).* The fee paid for Support Services defined in Sections 2.9 through 2.14 shall obligate MMI only to provide support as defined to the Administrative User(s) in the current Exhibit A form and paid for by the Client. Fees for Support Services will be listed in a Quote accompanying a Quote for Entries for the Subscription Year.

    3.1.8 *Fee for Fax Service.* A fee for the optional fax service shall be listed on a Quote provided to Client, when the fax service module has been requested by Client. Fax service shall not be enabled on Client's account unless Client accepts the Quote through issuance of a purchase order received by MMI.

    3.2 **Invoices; Payment**. Invoices shall be issued in accordance with the payment terms set forth in this Agreement. All pre-approved expenses and other charges, if applicable, will be listed on the invoice as a separate item. The Parties agree the terms and conditions of this Agreement will supersede any conflicting or additional terms set forth in any purchase order documents. Unless otherwise provided in this Agreement, Client will pay the undisputed amounts of any invoices within thirty (30) days of the invoice date.

    3.2.1 MMI shall provide a Quote for the next Subscription Year prior to the expiration of the current Subscription Year, based upon Client's requested level of Support Services, Entries and Data Storage Credit. If Client has not agreed to purchase Entries and Services at a fixed price for the next Subscription Year, then the Quote will reflect the current Subscription Year levels unless otherwise directed by Client. MMI must receive a purchase order for the Quote for the next Subscription Year prior to the last day of the current Subscription Year.

TABLE 3.2

LICENSE TERM FEES AND CREDITS

(Used for Multiyear Agreements only. See Quote for Single Year Subscription Agreements.)

Subscription Year	Fee for Entries	Fee for Support Services	Fee for Setup	Data Storage Credit (GB)
N/A				
N/A				
N/A				

    3.3 **Disputes**. Client will notify MMI of any disputed charges, in writing, within 15 days from the date of invoice. Any dispute must be reasonable given the terms of this Agreement. The written dispute will include the bases of the dispute and cite all term(s) of the Agreement that validate Client's bases for dispute. MMI and Client will attempt in good faith to resolve any dispute. If the Parties resolve the dispute, MMI will re-invoice for the agreed amount and payment will be due upon receipt of the invoice. If the Parties fail to resolve the dispute within thirty (30) days after the notice by Client, then MMI will consider all disputed amounts as immediately due and payable, and failure of Client to make payment shall be considered a "Failure to Pay" pursuant to Sections 3.4 and 3.5, below.

    3.4 **Taxes and exemptions**. Client shall also pay or arrange exemption from any taxes, charges, or other fees imposed on its use of the eSOPH System (other than taxes on MMI's income), including any applicable sales and/or use tax. If Client is a government agency and represents it is exempt from state or local sales or use tax, and it's later determined Client is not exempt from such tax, Client is responsible for paying or reimbursing MMI for all outstanding sales or use tax, including any penalties and interest.

3.5   **Failure to Pay**. If Client fails to pay any undisputed sums when due, MMI may, in its sole discretion, place Client's account in a Restricted Mode as follows: (a) if any undisputed amount on an invoice remains unpaid sixty (60) days after the date of the original invoice, MMI suspend Client's ability to create new Entries (Client would still be able to access existing Entries/Applicants); (b) if any undisputed amount on an invoice remains unpaid ninety (90) days after the date of the original invoice, MMI may suspend or terminate any and all of Client's access to the eSOPH System, including access by its Authorized Users and Applicants, in whole or in part, and cease to perform any and all of its obligations under this Agreement. These actions shall be in addition to, and not in lieu of, any other rights or remedies MMI may have at law or equity and are not a waiver of any such remedies.

3.6   **Total Contract Cost Authorized**. The total cost of this Agreement, including all payments from Client to MMI during the Term, excluding any subsequent Renewal, will not exceed **N/A** ("Total Authorized Cost"). In the event services (e.g. Data Storage or Support Service fees) requested or incurred by Client will result in costs greater than the Total Authorized Cost, then MMI shall notify Client as soon as MMI becomes aware. Client is responsible for adjusting its Total Contract Cost Authorized to cover any extra Data Storage or Support Services fees. MMI is not obligated under this Agreement to provide extra Data Storage or Support Services that would cause Client to exceed the Total Contract Cost Authorized, and Client shall remain obligated to pay excess costs for additional Data Storage and/or Support Services requested by Client's Administrative User(s).

4.   TERM, RENEWAL AND TERMINATION

4.1   **Term**. The term of this Agreement will commence as of the Effective Date and will continue through 12-months (a "Subscription Term"), and as renewed pursuant to Section 4.2 (Renewal), unless terminated by one or both Parties in accordance with this Agreement, or terminated automatically by the terms of this Agreement. If no fixed Subscription Term is provided, then the Subscription Term and Renewal Terms shall be on a year-to-year basis, coextensive with the Subscription Year.

4.2   **Renewal**. Except as written in Section 4.3, this Agreement shall automatically renew upon MMI's receipt of Client's purchase order for the next Subscription Year. The purchase order must be based on a valid, non-expired Quote from MMI, and received by MMI prior to the last day of the Subscription Year.

4.2.1   For fixed multi-year Subscription Terms, in the absence of a newly-executed multi-year agreement then receipt of a purchase order from Client for the next Subscription Year, received by MMI prior to the end of the final Subscription Year of the current multi-year Subscription Term, shall automatically renew this Agreement on a year-to-year basis upon the same terms of this Agreement and the Quote upon which Client's purchase order is based.

4.2.2   For purposes of clarity, so long as Client continues to timely pay invoices for Data Storage fees and any Support Services requested by Client, this Agreement shall continue in effect, including Renewals, and Client shall retain access to the data from its existing Applicant Entries. The amount invoiced for data storage overage shall be consistent with the amount(s) listed in the Quote for the prior Subscription Year, unless MMI gives Client sixty (60) days' notice of a data storage price change. If Client does not pay the data storage fee(s) within fifty-nine (59) days from the date listed on the original invoice, MMI may terminate this Agreement and, at MMI's sole discretion, permanently delete Client's data and/or revoke Client's access to the eSOPH System.

4.3   **Termination**.

4.3.1   If this Agreement is not renewed in accordance with Section 4.2, it shall automatically terminate upon expiration of the then-current Subscription Term.

4.3.2   Either Party may terminate this Agreement prior to expiration of a Subscription Term without cause upon sixty (60) days prior written notice to the other Party, provided that:

(a)   If Client terminates this Agreement prior to expiration of the current Subscription Term or current Renewal Term without cause, all fees for the remainder of the respective Subscription Term or

Renewal Term listed in Table 3.2 (Subscription Term Fees and Credits) shall become due and payable. Client shall pay all such fees in addition to any balance already outstanding within thirty (30) days of receipt of invoice.

(b)   If MMI terminates this Agreement prior to expiration of the Subscription Term or Renewal Term without cause, MMI will issue Client a refund for up to 25% of the remaining Entries, minus any outstanding charges owed by Client. MMI does not issue refunds in greater amounts, or for other circumstances, due to the upfront expenses MMI sustains from continuous maintenance of the eSOPH System.

4.3.3   MMI may terminate this Agreement immediately for cause upon any breach by Client of Section 2.4 (Restrictions on Use), or Section 2.5 (Acknowledgement of Limited Rights); or if Client or any of its Authorized Users violates MMI's Intellectual Property Rights.

4.3.4   Either Party may terminate this Agreement with cause upon thirty (30) days written notice to the other Party in the event the other Party: (a) becomes insolvent; (b) makes an assignment for the benefit of creditors; (c) files a voluntary bankruptcy petition; (d) acquiesces to any involuntary bankruptcy petition; (e) is adjudicated bankrupt; (f) ceases to do business; (g) or other reason amounting to any violation of law connected to the use of the eSOPH System.

4.3.5   Without limiting the Parties respective rights in Sections 4.3.3 and 4.3.4 above, either Party may terminate this Agreement with cause in the event that the other Party breaches this Agreement and the breaching Party does not cure such breach within thirty (30) days after receiving written notice of the breach and intent to terminate from the non-breaching Party. If either Party gives notice to the other for substantially the same breach three (3) times during a twelve (12) month period, the non-breaching Party may terminate this Agreement immediately with cause upon receipt of the third notice by the breaching Party.

4.3.6   A Party's termination of this Agreement under this Section 4.3 does not limit either Party from seeking other appropriate legal remedy for any breach.

4.4   **Effect of Termination**. In the event of termination hereunder, except as set forth in Section 4.3.2(b) above in the event MMI terminates without cause, Client shall have no right to a refund upon termination. Upon termination, MMI will not issue any refunds to Client for payments made pursuant to Section 3 of this Agreement, unless the reason for termination is an independent, sole act of MMI and also without cause. Client shall be obligated to pay in full upon Termination all invoices which were not disputed prior to the Termination. Client may continue to access the information for previously entered Applicants in the eSOPH System for a period of thirty (30) calendar days.

4.5   **Survival**. Where the context, nature, or express terms of any provision indicates intent that it shall survive termination or expiration of this Agreement, then it shall survive the same, including without limitation Sections 1 (Definitions), 2.4 (Restrictions on Use), 2.5 (Acknowledgement of Ownership and Limited License Rights), 3 (Fees and Payment), 4.3 (Termination), 5 (Data Access, Confidentiality and Security), 6 (Representations and Warranties), 7 (Limitation of Liability), 9 (Corrective Actions), 10 (Insurance), 11 (Notices) and 12 (General Terms and Conditions).

5.   DATA ACCESS, CONFIDENTIALITY AND SECURITY

5.1   **Authorized User Access Only.** Client is responsible for all use of its Authorized Users accounts on the eSOPH System. Client shall ensure that its Authorized User(s) properly control and limit access to the eSOPH System to Client's appropriate Authorized Users, and that Client's Authorized Users properly protect their logins, passwords and all other login credentials to prevent unauthorized access and misuse of Client Data, Applicant Data and any other information that may be accessed through the eSOPH System. Client is responsible for its own policy regarding Authorized Users changing their passwords, minimum password complexity requirements beyond what is required by the eSOPH System, and which computer terminals may be used to access the eSOPH System by its Authorized Users, including any unattended devices or computers logged into the eSOPH System. Client shall ensure any previous Authorized User who no longer has a valid purpose to access the eSOPH System will have their eSOPH System login credentials disabled within the eSOPH System, without delay. Former Authorized Users who

separate from their relationship with Client shall have their login credentials immediately disabled, without delay, by Client. Client will ensure that each Authorized User has unique login credentials; an Authorized User may not share or disclose its login credentials to any other person, even if such other person is also an Authorized User.

5.2 **Two-Factor Authentication.** Client acknowledges the eSOPH System offers optional two-factor authentication using Google Authenticator. This service is automatically available to those Clients who desire a two-factor frontend login process.

5.3 **Client's Sharing of Applicant Data.** The eSOPH System allows Client to externally share Applicant data and other information about Applicants from the eSOPH System. If Client or its Authorized User(s) share Applicant Data or other information about an Applicant with a third party, Client must: (i) possess valid, signed authorization from each Applicant whose Applicant Data or information is to be shared, legally adequate to authorize Client to share such Applicant Data or information, (ii) refrain from violating any law, policy, term or rule by sharing, transmitting or otherwise disclosing such Applicant Data or information, and (iii) keep the Applicant Data and information secure and private in accordance with any and all applicable privacy laws, and other legal requirement(s) and obligation(s).

5.4 **MMI's Sharing of Basic Applicant Data.** Client acknowledges and understands a valuable part of the eSOPH System is the ability for Client to see if an Applicant has been entered into the eSOPH System by other MMI client(s). If Client enters an Applicant into the eSOPH System, the eSOPH System will disclose if any other MMI client has previously entered the same Applicant into the eSOPH System. "**Basic Applicant Data**" information produced to other MMI clients is limited to: Agency/entity name, position applied for, entered date, and closed date. The eSOPH System will also display the point of contact for any other agency(s) who have previously entered the Applicant into the eSOPH System. If Client purges their backgrounds from the eSOPH System, the Basic Applicant Data (as defined in this Section) will remain on the eSOPH System and be visible to other MMI clients. Further information regarding another agency's entry of an Applicant, must be gained through that agency's permission and their own internal process(es).

5.5 **Security Incident.** In the event MMI learns of a Security Incident, MMI will make every effort to notify Client within 24-hours of learning of the breach. Notification will be made to at least one of Client's Administrative Users listed on Exhibit A via telephone and email. Notifications will only be made when an actual Security Incident has occurred; if the data is encrypted, by industry standards, no Security Incident is considered to have occurred and no notification will be made. At the request of Client, and with Client's cooperation and assistance, MMI will work together with law enforcement and other personnel in connection with the unauthorized access into the eSOPH System. MMI takes the privacy and security of data seriously, and uses reasonable administrative, technical, and physical safeguards to protect the confidentiality and security of all Client Data. Clients are encouraged to review MMI's eSOPH Security Overview, which is updated as needed by MMI from time to time and is available upon request.

5.6 **Ownership of Client Data.** Client owns all Client Data entered into the eSOPH System by its Authorized Users and its Applicants, including Applicant Data entered in response to the Client's request for information to process an Applicant's background investigation.

5.7 **Post-Termination Retention of Data.** Without limiting Client's rights to Client Data and Applicant Data hereunder, MMI may retain and store the following data during and after the term of this Agreement: Applicant name, Applicant telephone number, Applicant mailing address, Applicant email address, Applicant year of birth, date the Applicant was entered into the eSOPH System, Applicant's background investigation close date, position Applicant has applied for with Client, and the legal agreements (e.g., MMI's Electronic Signature Agreement, Terms of Use and Privacy Policy) related to any Authorized User's or Applicant's use of the eSOPH System. MMI may retain such information and use it to comply with applicable law and the eSOPH System Terms of Use and Privacy Policy and for the purposes described in Section 5.4 (MMI's Sharing of Basic Applicant Data). Other than as stated in this Agreement, MMI will not use such information for other purpose.

5.8 **Confidential Information.** In performance of this Agreement, the Parties may directly or indirectly disclose to each other confidential information, proprietary information, or confidential data ("**Confidential Information**"). "Confidential Information" shall include any data and/or information that is identified by either Party as confidential (either orally or in writing) or is of such a nature that a reasonable person would understand such information to be confidential, including, but not limited to, (a) trade secrets or confidential business information of either Party, including without limitation information about such Party's technology, financial information, and plans; and (b) personal information of employees, Applicants, and Authorized Users, including but not limited to, images, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, educational records or other information identifiable to a specific individual that relates to any of these types of information ("**Personally Identifiable Information**" or "**PII**").

5.9 **Exclusions from Confidential Information.** Notwithstanding the foregoing, Confidential Information shall not include information the receiving Party can prove by clear and convincing written contemporaneous evidence is: (1) publicly known through no fault or negligence of the receiving Party; (2) rightfully possessed by the receiving Party prior to disclosure by the disclosing Party; (3) rightfully obtained by the receiving Party from a third-party in lawful possession of such Confidential Information without obligation of confidentiality; (4) independently developed by the receiving Party without reference to or use of the disclosing Party's Confidential Information.

5.10 **Restrictions on Use and Disclosure**. Each party shall not use the other party's Confidential Information for any purpose other than performance of its obligations and exercise of its rights under this Agreement. Furthermore, each party shall not disclose the other party's Confidential Information to any third party except to such party's employees, contractors, and other representatives who (a) have a bona fide need to know such Confidential Information for purposes of performing this Agreement, (b) have been informed of the confidential nature of such information, and (c) have agreed in writing or are otherwise legally bound not to use or further disclose such information except as permitted by this Agreement.

5.11 **Disclosure Required by Law.** Notwithstanding the foregoing, Confidential Information may be disclosed by a receiving Party to the extent required to be disclosed by public disclosure law or a court order, subpoena, or similar legal requirement; or necessary to disclose to prevent severe physical injury to or loss of life of an individual; provided, however that the receiving Party shall notify the disclosing Party prior to such required disclosure promptly and sufficiently in advance to permit the receiving Party to contest or limit such required disclosure, including without limitation redaction of trade secret information prior disclosure.

5.12 **Public Records Request.** MMI acknowledges that Client, as a public entity, is at all times subject to state public records acts, as now existing or as amended. If Client receives a public records request for all or any portion of this Agreement, including any documents or materials provided to Client under this Agreement, generally such information will be a public record and must be disclosed to the public records requester.

5.13 **Storage and Encryption.** During the Term of this Agreement, MMI will store and maintain Client Data and Applicant Data for use and access by Client and its Authorized Users under the terms of this Agreement. MMI will ensure industry standard data encryption methods are in place for storage of Client Data and Applicant Data. The encryption shall meet or exceed CJIS standards. All Client Data shall be stored within the United States.

5.14 **CJIS Compliance; Background Checks.** MMI will comply with Criminal Justice Information Systems ("CJIS") rules and regulations as they may apply to Applicant and Client data. MMI shall ensure all employees and contractors of MMI granted access to Client Data satisfactorily complete a background check and meet the requirements set forth by CJIS for access to Client Data.

5.15 **Backups**. For Client Data on the production system, MMI shall record snapshot copies of Client Data hourly during the Term and shall record full backup copies of Client Data once per week. Backup copies are stored on both MMI's production server, to enable a quick restore if necessary, and remotely within Amazon Web Services GovCloud. Backup records that are older than one calendar week are automatically purged from MMI's

production system. At least three months of backup copies are stored remotely within AWS GovCloud. MMI uses proprietary software to monitor the automated tasks of Microsoft SQL. For Client Data the Client has sent to the archive storage solution: This data will be retained within the archive storage solution until such time client purges such data. Data sent to archive storage by the Client is not backed up to help control costs and offer a less expensive long-term storage solution for the Client.

5.16   Payment Card Data. If Client will request or have access to credit card information, Client represents that it is presently in compliance with, and will remain in compliance with, an approved version of the Payment Card Industry Data Security Standard, developed and published jointly by American Express, Discover Financial Services, JCB, MasterCard Worldwide and Visa International ("**Card Issuers**") or the PCI Security Standards Council (the "**Council**"), as applicable, for protecting individual numbers used to identify credit and debit card accounts and other personally identifiable information relating to the use of such credit and debit card accounts ("**Cardholder Information**"), as the same may be amended, updated, replaced or augmented by the Card Issuers and the Council (the "**PCI Standard**"). Client acknowledges that it may, in connection with performing its duties in accordance with this Agreement, have access to, or be provided, Cardholder Information. Client may not commit any act or omission that causes MMI to be in violation of the PCI Standard or to be fined, sanctioned or penalized by Card Issuers, the Council or any third party for the failure to properly protect, secure, maintain, use and store Cardholder Information. Client further acknowledges and agrees that, as between Client and MMI, all Cardholder Information is, and will remain, controlled by and the responsibility of Client. Client further acknowledges and agrees that Client is solely responsible for the security of Cardholder Information that it possesses or controls.

5.17   Acts or Omissions of Client. MMI shall have no responsibility or liability with respect to, and Client shall solely be responsible and liable for, any Security Incident and any loss, expense, damage, cost, or liability associated therewith, to the extent caused by or resulting from any act or omission of Client or Client's Authorized Users, employees, contractors (excluding MMI), or agents, including without limitation: (a) their loss of control of any device; (b) their failure to maintain the confidentiality of their log-in credentials; (c) their transmission of data via methods that are not secure; (d) any vulnerability in their environment, systems, hardware, software, or physical or administrative security safeguards or procedures; (e) their use of the eSOPH Platform in violation of this Agreement or any Documentation; (f) their failure to obtain adequate release(s), waiver(s), or legally or contractually required consent; (g) Client's failure to maintain hardware and software that are compatible with any updated or security patches released and implemented by MMI; (h) Client's declining to implement two-factor authentication as described in Sections 5.2 (Two-Factor Authentication).

6.   REPRESENTATIONS AND WARRANTIES

6.1   Client represents and warrants that:

6.1.1   Client has full right, power and authority to enter into and perform its obligations according to the terms of this Agreement;

6.1.2   To Client's knowledge, the Client Data does not and will not infringe or misappropriate any copyright, patent, trade secret, trademark, or other proprietary right held by any third-party and is free of any lien, claim, security interest or encumbrance; and

6.1.3   Neither Client nor any of its employees has received, offered or provided, nor will it receive, offer or provide, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other thing of monetary value to any employee or agent of MMI as an inducement to do business with MMI. Client further warrants its Authorized Users have not, and will not engage in any collusion with any other potential supplier to secure this Agreement.

6.2   MMI represents and warrants that:

6.2.1   MMI has full right, power and authority to enter into and perform its obligations according to the terms of this Agreement;

      6.2.2   To MMI's knowledge, the Software complies with all applicable national, state, and local laws and regulations and, to MMI's knowledge, does not contain any material that infringes, violates, or misappropriates the Intellectual Property Rights of any third party, and (ii) to the extent the Software contains any materials subject to third party rights, MMI has obtained any and all necessary clearances, releases, approvals, licenses, or consents from third parties and made any and all required payments to third parties (including without limitation to unions or guilds) so that Client and its Authorized Users can exercise the rights and licenses authorized under this Agreement;

      6.2.3   For the Term of this Agreement, the eSOPH System will operate substantially in conformance with any written specifications contained in any Documentation and in this Agreement, including the Client Specific Terms of the Quote. MMI's sole obligation to Client and Client's sole remedy under this warranty is to correct the eSOPH System so it will perform within any represented specifications or refund the related license fee, whole or in part. This warranty is void if any unauthorized modifications are made to the eSOPH System or if the eSOPH System is not used in compliance with the terms of this Agreement; and

      6.2.4   Except for the limited warranty provided in this Agreement, the eSOPH System and any other MMI products and services are provided "As Is" and MMI disclaims all warranties, express or implied, that may arise either by the Parties' agreements or by operation of law, including without limitation any warranty of merchantability or fitness for a particular purpose. MMI does not warrant the operation of the eSOPH System shall be error or "bug" free or that the eSOPH System will meet the requirements or expectations of Client, its Authorized Users or Applicants.

7.   **ASSUMPTION OF RISK; LIMITATION OF LIABILITY**

    7.1   **Assumption of Risk; Limitation of Liability.** Each Party shall be solely liable for third party claims arising from any willful or negligent act or failures to act, or the errors or omissions, of the Party's owners, officers, employees, agents or contractors. Excepting for the breach provisions of this Agreement, neither Party to this Agreement, nor any of such Parties' respective Affiliates, trustees, directors, officers, employees, fellows or agents shall be responsible or liable to the other Party for any injury, loss, or damage of any kind, including but not limited to indirect, special, incidental consequential, punitive damages or lost profits, relating to design, development, specification, manufacture, production or use of the eSOPH software and services or any part thereof. The limitations on liability of the previous sentence shall apply even though a Party may have been advised of the possibility of such injury, loss or damage. This paragraph shall not apply to an Indemnifying Party's obligation to indemnify an Indemnified Person under this Section or any obligations to maintain specific insurance requirements pursuant to any provision of this Agreement. Nothing in this Agreement shall be construed to limit any remedies available to the Parties in law or equity, including but not limited to injunctive relief.

8.   **NOTIFICATION OF THIRD-PARTY ACTION OR CLAIM**. Client shall notify MMI of any third party lawsuit, action, and proceeding or claim brought or threatened by a third party against Client or its employee, subcontractor, or other representative or agent based in part on Client's or an Applicant's use of the eSOPH System, including without limitation (a) claims regarding privacy, security, collection, use, processing, or disclosure of Client Data collected through or stored by the eSOPH System, (b) and claims where it is reasonably likely that MMI will be named as a party or witness.

9.   **CORRECTIVE ACTIONS.** If all or any part of the Software is held, or MMI determines that it could be held, to infringe, wrongfully use or misappropriate any third-party intellectual property right, MMI at no cost to Client: (a) will procure for Client the right to continue using the eSOPH System in accordance with its rights under this Agreement; (b) replace the item with a substantially equivalent item that does not infringe, wrongfully use or misappropriate any third-party intellectual property rights; or (c) modify the item (without material loss of functionality) so that it no longer infringes, wrongfully uses or misappropriates any third-party intellectual property right. If MMI is unable to successfully accomplish any of the actions described above after using its commercially reasonable best efforts to accomplish each of them in a timely manner, then MMI will refund to Client a pro-rated amount of the license fees paid by Client hereunder in connection with the unused portion of its licensed rights to the eSOPH System under this Agreement. The remedies set forth in this Section 9 are Client's

sole and exclusive remedy and MMI's sole obligation with respect to breach of the warranty contained in Section 6.2.2.

10.   INSURANCE

10.1   Throughout the Term MMI, at its sole expense, will carry and maintain: (a) Commercial General Liability Insurance in the amount not less than $1,000,000 combined single limit per occurrence, $2,000,000 aggregate; (b) Stop Gap/Employer's Liability Insurance in the amount not less than $ 1,000,000 per incident; (c) Professional Liability Insurance in the amount not less than $1,000,000 per claim and in the aggregate; and (d) "Cyber" Insurance in the amount not less than $1,000,000 combined single limit occurrence, $2,000,000 aggregate. MMI will have Client added to the MMI Insurance policy and issue a certificate to Client at Client's request. If Client has requested to be added to the policy, MMI will provide to Client a new certificate, each year, if requested by Client.

10.2   Client represents it is self-insured or has appropriate insurance to fulfill and maintain its obligations and duties under this Agreement.

11.   NOTICES. All notices and requests in connection with this Agreement will be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed to MMI or Client at the following addresses:

For Miller Mendel, Inc., copy of Notice(s) to: For Client, copy of Notice(s) to:

Mr. Kurt Rylander
Rylander & Associates
406 W 12th St
Vancouver, WA 98660

12.   GENERAL TERMS AND CONDITIONS

12.1   Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, which such consent may not be unreasonably withheld. Subject to this Section 12.1, this Agreement will inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective Parties.

12.2   Compliance With Laws. Each Party will, at its expense, obtain all permits and licenses, pay all fees, and comply with all federal, state and local laws, ordinances, rules, regulations, codes and orders applicable to its performance under this Agreement.

12.3   Construction. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, then that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

12.4   Governing Law. This Agreement will be governed by, and construed in accordance with the laws of the state Client is located within, as applied to contracts performed therein but without reference to its choice of law rules, or the federal laws as applied to contracts performed with the United States government. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed.

12.5   Headings. The headings and sections in this Agreement and any exhibit, are for convenience and will not be construed to define or limit any of the terms or affect the meaning or interpretation of this Agreement and any exhibit.

12.6   Independent Contractor. MMI and Client are independent contractors under this Agreement, and nothing in this Agreement may be construed to create a partnership, joint venture, franchise or agency or fiduciary relationship between them. Neither Party has any authority to enter into agreements or make any representations of any kind on behalf of the other Party.

12.7   Nonexclusive Agreement. It is expressly understood and agreed that this Agreement does not grant to Client any exclusive privileges or rights, and MMI may contract with other clients and customers.

12.8   Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that any facsimile copy, including those exchanged electronically as a .pdf, of a signed counterpart of this Agreement will be treated the same as a signed original of this Agreement.

12.9   Entire Agreement. This Agreement together with the Quotes and any exhibits attached hereto contains the entire agreement and understanding of the Parties with respect to the transactions and matters contemplated herein, supersedes all prior and contemporaneous agreements or negotiations between Client and MMI concerning the subject matter hereof, and cannot be amended except by a writing dated subsequent to this Agreement and signed by both Parties. To the extent the terms and conditions of this Agreement conflict with the terms and conditions of an exhibit, the terms and conditions of this Agreement will control. Terms and/or conditions listed in purchase orders(s) from Client that are in conflict with or in addition to the terms of this Agreement are not accepted by MMI. No course of dealing or usage of trade may be invoked to modify the terms and conditions of this Agreement.

12.10   Copies Shall Be Considered Originals. Any complete, legible signed copy of this Agreement shall be considered an original.

12.11   Signing Authority. Client represents and warrants the person executing this Agreement is a duly authorized officer or representative of the Client, and has full authority to execute this Agreement, including any amendment thereto, for and on behalf of Client. Client understands that it is fully responsible to ensure the authority of its signatory under to this Agreement and is responsible for any actual or consequential damages incurred by MMI in the event of a breach of this Section by Client.

12.12   Cooperative Agreement. The provisions of this Agreement will be extended to other city, county or state governmental entities within the state the Client is located, at then-current pricing. Governmental entities wishing to use this Agreement (hereinafter referred to as the "Cooperative Entity") will be responsible for obtaining a Quote specific to their entity, issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments in accordance with the Terms of this Agreement. To determine pricing for Cooperative Entities, MMI will use the then current pricing formula used for all Cooperative Entities within the state Client is located within. The Cooperative Entity wishing to use this Cooperative Agreement must execute with MMI a supplemental Agreement with at least one paragraph specifying they wish to use this Cooperative Agreement and agree to be bound by the terms of the Cooperative Agreement. The Agreement with the Cooperative Entity electing to use this Cooperative Agreement shall include language that MMI shall hold harmless and defend Client (as defined on the first paragraph of page 1 of this Agreement) from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Cooperative Agreement. Failure to include such language will be considered a material breach of this Agreement and grounds for immediate Agreement termination. Cooperative Entities are responsible for obtaining all certificates of insurance and bonds required. MMI is responsible for providing each Cooperative Entity a copy of this Agreement upon request by the cooperative entity. Client makes no guarantee of usage by other users of this Agreement. The extension of the terms of this Agreement to other entities pursuant to this clause shall be subject to MMI's discretion as to whether MMI has capacity and ability to do so, including but not limited to personnel, management, equipment, technical and/or financial limitations.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives.

For Miller Mendel, Inc. ("MMI")

_____   _____

Tyler Miller, President & CEO   Date

For Client; Arlington County

_____   _____

Primary signature   (Required)   **Date**

_____

Print name and title   (Required)

_____   _____

Secondary signer's signature, if required by Client   Date

_____

Print name and title

_____   _____

Secondary signer's signature, if required by Client   Date

_____

Print name and title

_____   _____

Secondary signer's signature, if required by Client   Date

_____

Print name and title

EXHIBIT A

ADMINISTRATIVE USERS

The Client hereby designates the following person(s) as Client's Administrative Users. This listing is a complete listing of all Administrative Users, and completely replaces any prior completed Exhibit A.

Note: Client may give multiple people "admin" permission within the system, at Client's control and discretion. This form designates only those Administrative Users who may contact MMI for Support purposes.

PRIMARY ADMINISTRATIVE USER:

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

OTHER ADMINISTRATIVE USERS (ADDITIONAL FEES APPLY):

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

Item/Service	Year 1	Year 2	Year 3
Onsite Setup and Training	$10,000.00 (flat fee)	N/A	N/A
Entry into eSOPH system	$45.00 each	$46.50 max, each	$47.50 max, each
Support	No charge for first purchase of entries only.	15% of cost of entries.	15% of cost of entries.
Fax Module (annual fee)	$350.00	$375	$400
Page per page/unit	$0.05 each	$0.07 max, each	$0.07 max, each
Credit Report pull	$3.50 each	$4.00 max, each	$4.25 max, each
Social media report pull	$20.00 each	$21.00 max, each	$22.00 max, each
Production Storage Overage	$15.00 per GB per Mo	$15.00 per GB per Mo	$15.00 per GB per Mo
Archive Storage	$3.50 per GB per Mo	$3.50 per GB per Mo	$3.50 per GB per Mo

- *For pricing indicated as "max, each", the price listed is the max cost of the item/service but may be less depending on the pricing Miller Mendel's service providers are charging at the time.*
- *For a complete explanation of Miller Mendel's pricing formula used nationwide with all clients for the eSOPH software subscription service, please refer to the MMI MSSSA.*
- *Pricing listed in the above table is specific to Arlington County Police Department. A different agency wishing to utilize this RFP Response is subject to the nationwide pricing formula explained in in the MMI MSSSA.*

MSSSA ADDENDUM FOR SOCIAL INTELLIGENCE SERVICES

This Addendum for Social Intelligence Services (this "**Addendum**") modifies that certain Master Software Subscription Services Agreement (the "**MSSSA**"), between **Miller Mendel, Inc.**, ("**MMI**"), and Arlington County by and through Arlington County Police Department ("**Client**"). MMI and Client may each be referred to individually as a "**Party**" or collectively as the "**Parties.**" Unless separately defined in this Addendum, capitalized terms have the meanings specified in the MSSSA.

In consideration of the mutual promises and covenants herein contained, the Parties, each intending to be legally bound hereby, do promise and agree as follows:

AGREEMENT

1.   SIC Services. Client hereby subscribes to, and MMI agrees to provide, a service through the eSOPH System to deliver access to Social Intelligence Corp. ("**SIC**") internet and social media background screening and/or monitoring of Applicants to produce monitoring reports, screening reports, and social intelligence monitoring (collectively, "**SIC Reports**") and other services as may be available from SIC through the eSOPH System (the "**SIC Services**"). Except as expressly provided herein, all the terms and conditions of the MSSSA that apply to the provision, access, and use of the SIC Services are incorporated herein by reference and remain in full force and effect.

2.   Fees and Payment. Fees and payments for the SIC Services are governed by the terms and conditions of the MSSSA.

Select report type (done by client):   _____ Basic   **X** Comprehensive ('Pro')

3.   Applicant Data. Any information, materials, data or other content made available to MMI, including any SIC Reports, transmitted by an Applicant or by a Client about an Applicant to the eSOPH System that is used for the SIC Services is **Applicant Data**, and is subject to all terms and conditions of the MSSSA governing transmission, ownership, use and disposition of Applicant Data.

4.   Protection of Applicant Data. The Parties hereby acknowledge that the SIC Services and Applicant Data provided by either Party to the other Party may include personal information pertaining to Applicant. The Parties agree to treat Applicant Data responsibly and take all necessary steps to maintain appropriate security and confidentiality, to protect against anticipated threats or hazards to the security or integrity of the Applicant Data, and to prevent unlawful access, dissemination or misuse of Applicant Data by Authorized Users, Applicants, employees, officers, agents or any other person. Client agrees that Client shall be solely responsible for assuring the secure and confidential manner in which Client stores, delivers, and transmits SIC Services to its Authorized Users.

5.   Client Use of SIC Services. For each SIC Report requested, Client shall (i) identity the end-user of the SIC Report; (ii) certify the purpose for which the SIC Report will be used; and (iii) certify that the SIC Report will be used for no other purpose.

6.   Compliance with Laws. Client agrees that compliance with all federal, state, and local laws, rules, ordinances, and regulations (collectively, "**Applicable Laws**") applicable to (i) Client's access, collection, storage, transmission, receipt and use or obtaining of the SIC Reports or Applicant Data, (ii) the particular industry in which Client does business, and/or (iii) Client's business operations or structure, is the sole responsibility of Client. Without limiting the foregoing, Client agrees that Client is a type of consumer reporting agency and, as such, Client will comply with all applicable requirements of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* ("**FCRA**") and further agrees to the following:

> **6.1**   Client certifies that it is a user of 'consumer reports' and will only use SIC Reports for "employment purposes" and no other (as those terms are defined in 15 U.S.C. § 1681a).

> **6.2**   Client must comply with all applicable procedures and requirements of the FCRA and applicable state law, including, but not limited to: (i) providing a proper disclosure, (ii) obtaining a written authorization, (iii) providing a certification to MMI that it will comply with the FCRA and will not use

the SIC Reports in violation of any EEO law or regulation, and (iv) following the adverse action requirements set forth in the FCRA and applicable state laws. Client agrees to take all reasonable measures to enforce said requirements.

6.3 Client, and not MMI, is solely responsible for compliance under the FCRA.

6.4 Client agrees to defend, indemnify and hold MMI and SCI harmless from any and all claims or damages related to the SIC Reports or arising from adverse actions (as set forth in Section 8 herein) by Client against Applicant based on eSOPH's SIC Services.

7. **Notice and Consent.** In using the SIC Services, Client shall comply with all applicable privacy and data security laws and the respective, then-current privacy policies of MMI and SIC, as applicable. Without limiting the foregoing, Client certifies that:

7.1 Client will ensure that prior to procurement or to causing the procurement of an SIC Report for employment purposes: (i) a clear and conspicuous disclosure has been made in writing to Applicant in a document that consists solely of the disclosure that an SIC Report may be obtained for employment purposes; and (ii) Applicant has authorized in writing the procurement of the report by Client;

7.2 Client is solely responsible for retaining and will retain all executed Applicant authorization agreements. Client will provide MMI a fully legible copy of Applicant authorization agreements if so requested by MMI within five calendar days of MMI's request; and

7.3 Client will provide any legally required notices or disclosures and will obtain legally adequate consent from all Applicants as required by Applicable Laws.

8. **Employment Decisions Based on an SIC Report.** Client certifies that, if required under the FCRA, before taking any adverse action based in whole or in part on the SIC Report generated by SIC Services for employment purposes, Client will provide to the Applicant about whom the report relates (i) a copy of the report, (ii) a description in writing of the rights of Applicant as prescribed under the FCRA; and (iii) a statement that information from the SIC Report and the SIC Services will not be used in violation of any applicable federal or state equal employment opportunity law or regulation. Client agrees it is solely responsible for any adverse actions taken against an Applicant and for Client's compliance under the FCRA.

9. **SIC Services Permitted Use.** Client represents and warrants to MMI that it shall only access and use the SIC Services for Client's own internal business and solely in the manner explicitly permitted in the MSSSA. Client agrees that it shall not:

9.1 change, modify, copy, add code to, create derivative works based on any aspect of, or otherwise alter the SIC Services in any manner;

9.2 reverse engineer; disassemble; decompile; in any way attempt to recreate, obtain, perceive or derive the source code of; or translate the SIC Services;

9.3 use, transform, modify, assess or adapt the SIC Services for use for any other purpose, including but not limited to assist in the development or functioning of any product or service that is competitive, in part or in whole, with any existing or reasonably anticipated product or service of SIC;

9.4 distribute, publish, transmit or disseminate in any form or by any means (including but not limited to via the internet) any part of the SIC Services or data;

9.5 allow any third party to access the SIC Services;

9.6 sell, sublicense, resell, lease, rent, time-share or otherwise transfer any of the SIC Services or data;

9.7 use the SIC Services or data to identify or solicit potential customers for its products or services;

     9.8   use the SIC Services to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children, or violate third-party privacy rights; and

     9.9   gain or attempt to gain unauthorized access to; disrupt the integrity or performance of; or damage, disable, overburden or impair the operation of the SIC Services or the data contained therein.

     10.   **Notification of Security Breach**. In the event Client determines that physical or electronic safeguards have been breached or that any other unauthorized access to Applicant Data has occurred (in each case, a "**Breach**") that directly affect provision of the SIC Services, Client shall notify MMI of the Breach within 24 hours of discovery. Such notice shall be in writing and shall include all information known by Client as of the date and time of notification.

     11.   **SIC Intellectual Property Rights.** Client acknowledges that SIC has expended substantial time, effort and funds to create and deliver the SIC Services. All SIC intellectual property not related to the eSOPH System is and will continue to be SIC's exclusive property. Nothing contained in this Addendum shall be deemed to convey to Client or to any other party any ownership interest in or to intellectual property or data provided in connection with SIC and eSOPH's SIC Services.

     12.   **No Representations or Warranties.** Without limiting the provisions of Section 6 of the MSSSA, MMI makes no representations or warranties as to the value, accuracy, or suitability of the SIC Services. Client agrees to be solely responsible for Client's use of the SIC Services.

     13.   **Termination.** In addition to and without limiting Section 4.3 of the MSSSA, MMI may terminate this Addendum at any time with or without cause or notice at MMI's sole discretion without penalty.

     14.   **Entire Agreement.** The Agreement, together with this Addendum, constitutes the entire agreement between the Parties relating to the subject thereof and supersedes all prior agreements, representations, negotiations and statements pertaining thereto and may not be modified except in writing signed by both Parties.

     15.   **Addendum Controls.** Where a conflict exists between the terms of this Addendum and the MSSSA, the terms in this Addendum will control. Except as expressly amended herein, the remaining terms and conditions of the MSSSA shall continue in full force and effect.

     16.   **Counterparts.** This Addendum may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that any facsimile copy, including those exchanged electronically as a .pdf file, of a signed counterpart of this Addendum will be treated the same as a signed original of this Addendum.

     IN WITNESS WHEREOF, the Parties have caused this Addendum to be duly executed by their respective duly authorized representatives.

MILLER MENDEL, INC   **CLIENT: ARLINGTON COUNTY**

By:_____*Tyler J. Miller*_____   By:_____

Name: **TYLER MILLER**   Name: _____

Title: **PRESIDENT & CEO**   Title:_____

Date: **APRIL 23, 2021**   Date: _____

555 12th Street NW
Suite 504
Washington, DC 20006
(1) 714 830 7000 T
(1) 714 830 7000 F
www.experian.com

April 23, 2021

Arlington County Police Department   (571) 289-3402
1425 N Courthouse Rd
Arlington, VA 22201

This Letter Agreement is between Experian Information Solutions, Inc. ("Seller") and the Arlington County Police Department ("AGENCY") covering AGENCY'S use of Seller's Employment Insight services being provided to AGENCY through Miller Mendel, Inc. ("Processor") which are being procured by Processor under the Agreements established between Seller and Processor (STAC 2282020HR)

In consideration of the mutual covenants and agreements contained in this Letter Agreement and the provision and use directly by AGENCY of the Seller's services, the parties agree as follows:

1.   General Provisions for Data Use

(a)   Data Use Restrictions. AGENCY agrees that it will not, either directly or indirectly, itself or through any agent or third party, without the prior written consent of Seller, request, compile, store, maintain, resell or use the Services (including any of the information contained in the Services) to build its own credit reporting database. AGENCY shall be solely responsible for assuring the secure and confidential manner in which it stores, delivers and transmits Services to its authorized employee users.

(b)   Inquiries. When accessing Services, AGENCY certifies it will use reasonable measures to identify consumers and will accurately provide Seller with complete identifying information about the consumer inquired upon in the form specified by Seller. AGENCY will enter all requested AGENCY and type code information when requesting Services. Seller may use AGENCY'S inquiry data for any purpose consistent with applicable federal laws, rules, and regulations in Seller's provision of the Services to AGENCY in its obligations as a consumer credit reporting as it pertains to Seller's use of inquiry data for reporting, billing, and auditing purpose only.

(c)   Intellectual Property Rights. AGENCY acknowledges that Seller has expended substantial time, effort and funds to create and deliver the Services and compile its various databases. All data in Seller's databases and any other intellectual property that are part of the Services are and will continue to be Seller's exclusive property. Nothing contained in this Letter Agreement shall be deemed to convey to AGENCY or to any other party any ownership interest in or to intellectual property or data provided in connection with the Services; provided however, Seller hereby grants AGENCY a limited, non-exclusive, non-transferable, nonsublicense-able, license to use the data and Services for its own internal business purposes in accordance with the terms and conditions of this Letter Agreement and applicable law.

555 12th Street NW
Suite 504
Washington, DC 20006
(1) 714 830 7000 T
(1) 714 830 7000 F
www.experian.com

(a) **Confidential Treatment.** Under no circumstances will AGENCY resell or otherwise disclose to any other person, other than employees or agents whose duties reasonably relate to the lawful business purpose for which the Services were obtained, any of the Services or data that Seller delivers to AGENCY. Both parties hereby acknowledge that the Services and/or data provided by either party to the other may include personal information pertaining to individual consumers, and requires that the parties treat such information responsibly and take reasonable steps to maintain appropriate confidentiality and to prevent unlawful dissemination or misuse by its employees, officers, agents or any other person with access to such information. The Services and data shall only be used as expressly authorized in this Letter Agreement.

(b) **Compliance with Laws.** AGENCY shall comply with all federal laws, rules regulations and decisions applicable to AGENCY'S use of the Seller's data and Services provided pursuant to this Letter Agreement.

(c) **Notification of Security Breach**. In the event that AGENCY determines that physical and/or electronic safeguards that directly impact the Services being provided under this Letter Agreement have been breached, and that Seller data provided under the Letter Agreement has been obtained by persons and/or entities without authority to use or view such Seller data, then AGENCY shall notify Seller to the extent allowed by applicable law and/or law enforcement AGENCY, in writing, within 24 hours of discovery.

(d) **Warranty and Disclaimers.** Seller warrants to AGENCY that Seller will use commercially reasonable efforts to deliver the Services in a timely manner. Because the Services involve conveying information provided to Experian by other sources, Seller cannot and will not, for the fee charged for the Services, be an insurer or guarantor of the accuracy or reliability of the Services or the data contained in its various databases. THE WARRANTY IN THE FIRST SENTENCE OF THIS PARAGRAPH IS THE ONLY WARRANTY SELLER HAS GIVEN STATE WITH RESPECT TO THE SERVICES. SELLER MAKES NO REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, ANY SELLER DATA, OR ANY OTHER MATERIALS (TANGIBLE OR INTANGIBLE) SUPPLIED BY SELLER HEREUNDER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES AS TO THE ACCURACY, COMPLETENESS OR CURRENTNESS OF ANY DATA OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

2.   **CONSUMER CREDIT SERVICES AND DATA ENRICHMENT**

 (a) Fair Credit Reporting Act ("FCRA") USE. AGENCY will request and use the Services strictly in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et. seq., as amended (the "FCRA"). Without limiting the foregoing, AGENCY certifies that AGENCY will request and use the Services solely in connection with (i) a single credit transaction with a consumer, or, if applicable, for another "permissible purposes" as defined by the FCRA; and (ii) transactions involving the consumer

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as to whom such information is sought and will not request or use such Services for purpose prohibited by law. If AGENCY uses the Services in any way related to collections, AGENCY acknowledges that permissible purpose does not include the collection of debts not voluntarily incurred by the consumer unless those debts are judicially established by a court order or judgment. AGENCY further certifies that it will comply with all requirements of the FCRA applicable to it. If AGENCY has purchased a consumer report from Seller in connection with a consumer's application for credit, and the consumer makes a timely request of AGENCY may share the contents of that report with the consumer as long as it does so without charge and only after authenticating the consumer's identity.

Fraud Shield. AGENCY (a) agrees to use the Service solely to validate a consumer's identity and not in whole or in part to establish an individual's eligibility for personal credit, insurance, or employment, and (b) certifies that it will not take any adverse action (as defined in the FCRA) against any consumer or deny access to any of AGENCY's services, which is based in whole or in part on information obtained from the Services. In lieu of any adverse action based on the Services, Experian recommends AGENCY take additional steps to verify the consumer's identity, e.g. request an identification document from the consumer or waterfall to secondary authentication service.

Employment Insight. AGENCY certifies to Experian that (a) it will ensure that prior to procurement or causing the procurement of a consumer report for employment purposes (an Employment Insight Report): (i) a clear and conspicuous disclosure has been made in writing to the consumer before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and (ii) the consumer has authorized in writing the procurement of the report by the AGENCY; (b) in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, AGENCY shall provide to the consumer to whom the report relates (i) a copy of the report; and (ii) a description in writing of the rights of the consumer as prescribed by the Bureau of Consumer Financial Protection ("Bureau") under the FCRA; and (c) information from the consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation. AGENCY acknowledges receipt of a copy of the Summary of Consumer Rights prescribed by the Bureau under Section 609(c)(1) of the FCRA and agrees to attach a copy of such Summary of Consumer Rights to each consumer report used for employment purposes as required by Section 604(b)(3)(A)(ii) of the FCRA.

3.   **WRITTEN INSTRUCTIONS**

Prior to AGENCY's request for a consumer report for the purpose of Employment, AGENCY shall obtain the written instructions of the consumer to whom it relates in compliance with the Fair Credit Reporting Act, 15 U.S.C. 1681 *et. seq.* ("FCRA"). AGENCY will obtain the consumer's express written instruction to access the consumer's consumer report for the purpose described above in a clear and conspicuous manner. If AGENCY's "permissible purpose" is based upon the written instructions of the consumer via the Internet, then AGENCY shall obtain the consumer's written instructions in a manner substantially similar to that provided for in Section 2(A) below or if AGENCY's "permissible purpose" is based upon written instructions of the consumer via the telephone, then AGENCY shall obtain the consumer's written instructions in a manner substantially similar to that provided for in Section 2(B)

below. In addition to the requirements described herein, AGENCY shall comply with all applicable electronic records and signatures laws, including but not limited to the Electronic Signatures in Global and National Commerce Act.

A.   Written Instructions by Internet. If AGENCY is obtaining a consumer's written instructions by Internet for access to a consumer report for the use described above, AGENCY shall comply with the following requirements.

(1) AGENCY will prominently display a message specifically informing the consumer that his or her credit report will be consulted for the use described above and no other purpose, and that clicking on the "I AGREE" button following such notice constitutes written instructions to the AGENCY under the FCRA. AGENCY agrees that the notice provided by AGENCY will be substantially as follows:

"You understand that by clicking on the I AGREE button immediately following this notice, you are providing 'written instructions' to (*AGENCY*) under the Fair Credit Reporting Act authorizing (*AGENCY*) to obtain information from your personal credit report or other information from Experian. You authorize (*AGENCY*) to obtain such information solely for Employment Purposes."

(2) The "I AGREE" button must immediately follow the notice provided for above. The notice and "I AGREE" button must be separate from any other notice or message contained on the web site.

(4) The consumer must have the ability to fully review any of the terms to which he or she is agreeing immediately preceding the consensual click.

(5) The consumer must not be able to proceed in the process without affirmatively agreeing to the terms in the notice.

(6) Prior to consenting, the consumer must be provided with a statement of the hardware and software requirements for access to and retention of the terms to which he or she is agreeing, including their consent, and the consumer must consent in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.

(7) The consumer must have the ability (should they choose) to print out the terms to which he or she is agreeing, including their consent.

(8) The record of the consumer's 'written instruction' by clicking "I AGREE" must be retained by Client in a form that is capable of being accurately reproduced for later reference by the parties.

(9) The consumer must be informed how, after providing consent, he or she may, upon request, obtain a paper copy of any applicable electronic record, and whether any fee will be charged for such copy.

(4) The AGENCY must provide the consumer with information on how the consumer can update his or her contact information to the extent required by applicable law.

<u>Written Instructions by Telephone</u>. If AGENCY is obtaining a consumer's written instructions over the telephone for access to a consumer report for the use described above, AGENCY shall comply with Section 2(A) of this Supplement, including as specifically modified below:

(1)   AGENCY will ask each consumer to confirm his or her consent to access such person's credit report by asking the following: "You need to authorize (*AGENCY*) to access your credit report for <u>Employment Purposes</u>. Please confirm your authorization to access your credit report for <u>Employment Purposes</u> by pressing the # key now";

(2)   The consumer must not be able to proceed in the process without affirmatively agreeing to allow access to his credit report as provided above; and

(3)   The record of the consumer's 'written instruction' by pressing the # symbol must be retained by AGENCY in a form that is capable of being accurately reproduced for later reference by the parties.

Kindly have an authorized representative sign at the bottom of this letter to indicate your agreement and return to my attention.

Chris Meehan
Director
267-898-2219

ACCEPTED AND AGREED BY ARLINGTON COUNTY POLICE DEPARTMENT

By: _____

Title: _____

Date: _____

ARLINGTON COUNTY QUICK QUOTE # QQ237251
for
BACKGROUND CHECK TOOL FOR APPLICANTS SEEKING EMPLOYMENT WITH ARLINGTON COUNTY POLICE DEPARTMENT

I.   INTRODUCTION:

Arlington County Police Department (ACPD) is seeking the services of a qualified firm to provide **a web-based software system for background screening of job applicants** for a period of up to three (3) years.

This solicitation is issued within the guidelines of the Arlington County Small Purchase guidelines.

II.   BACKGROUND:

The Arlington County Police Department (ACPD) was formed in 1940 with nine members protecting and serving the community. The County and Department have grown dramatically since, with 374 sworn personnel and 100 professional staff serving at ACPD today.

Arlington County, an "urban village" of approximately 26 square miles located just across the Potomac River from Washington, D.C., is both a residential community and a major employment center. The County's permanent population is currently in excess of 240,000 residents, which increases by more than 25% during the workday with the influx of commuters. Arlington County is home to landmarks such as the Pentagon, Arlington National Cemetery, Washington National Airport as well as the Iwo Jima and USAF memorials. Arlington County is also home to the Washington Capitals practice facility.

III.   SCOPE OF SERVICES:

ACPD is seeking a web-based electronic system for background screening of job applicants seeking employment with Arlington County Police department. The system shall meet the following requirements:

1. System shall have access to the local and federal law enforcement databases listed in the Offeror's response.

2. System shall allow for a way to request data from all law enforcement agencies in the US for local checks via fax/email/mail

3. System shall perform applicants mailing address validation in all 50 states.

4. Provide reports in the following areas:

    a. Criminal background check (see above).

    b. Credit Report check from one or more of the three major credit reporting agencies (Equifax, Experian or TransUnion

    c. Social media profile report or screening to include but not limited to; Facebook, LinkedIn, Instagram, Snapchat, TikTOk

5. System shall be customizable so ACPD can comply with state and local policies and manage workflow.

6. Digitally share information with other law enforcement agencies in the US.

7. Secure online access and storage such as multi-Factor Authentication, Login Lockdown and single sign on features.

8. System shall have cloud based unlimited storage that can be electronically transferred to internal database.

1

9   System shall provide ACPD with applicant tracking support and adverse impact analysis.

10 System shall allow applicants to enter their personal information directly into the system via a secure web page.

11 Successful Offeror shall be responsible for be responsible for hosting, maintenance, and technical support of the tool.

12 Successful Offeror shall provide initial training to the Arlington County Recruitment and Retention Unit recruiter

13 Successful Offeror shall provide a telephone and online customer service desk that is available, at minimum, during standard business hours.

14 Any and all work shall be performed by qualified and trained persons. Successful Offeror shall ensure that it and its employees have any required licenses and/or permits to perform the work.

IV.   QUESTIONS AND CLARIFICATIONS:

Inquiries or questions for information regarding this procurement, any procedures and/or proposal submission, shall be directed to Igor Scherbakov, Public Safety Procurement Specialist via ischerbakov@arlingtonva.us, or submitted via Q&A tool in eVA. Questions must be submitted no later than seven (7) calendar days prior to the solicitation closing date. No negotiation will be done after the closing of the solicitation. All clarifications and exceptions must be made before the solicitation closing date. Answers to questions and acceptable exceptions to terms will be posted on eVA no later than five (5) calendar days prior to solicitation close date.

V.   SUBMISSION REQUIREMENTS:

All responses to this QuickQuote shall be uploaded to on the dated indicated in the QuickQuote solicitation.

Each Offeror shall, as part of the submittal, describe the tasks/services to be undertaken, together with a discussion of the resources to be used to carry them out. Describe the methodology for performing the tasks/services and the management controls to be applied to these efforts.

The Offeror shall provide the following information:

1) Completed Offeror Information form found below as Attachment A.
2) Describe general capabilities of your company's system, and describe how it meets or exceeds requirements set in Section III "Scope of Services".
3) Describe in general terms the means and methods for developing, hosting, and/or support of the proposed system.
4) Provide a workflow diagram.
5) Indicate the average turnaround time from application to provision of report.
6) Provide a screenshot or a link to the standard application web page.
7) List the databases being used by the system.
8) Explain how user data is collected, aggregated, analyzed, and reported.
9) Provide at least one sample report.

10) List the law enforcement agencies that are currently using the system. List should be broken down by state.
11) Explain what differentiates the proposed system from other systems available in the marketplace.
12) Explain how the tool is optimized for mobile device use.
13) Describe any features and functions that differentiate your services in the marketplace.
14) Describe the support system offered, including hours of the help desk, types of help offered (online, telephone, in-person),
15) Describe any major changes or upgrades your company may anticipate within the next year.
16) Explain the capacity and compatibility for your system to archive screening data, and to export data to systems.

Each Offeror shall include, as part of the submittal, login to a sample or an active database for functionality evaluation purposes.

Each Offeror shall submit its cost proposal based on the number of applicants, or any other applicable variables. The cost proposal shall list the initial cost to set up the system as well as any subsequent annual maintenance or licensing costs, if applicable. Any recurring costs shall remain fixed for a period of three years. **County shall not be responsible for making payments for any costs not indicated in the cost proposal.**

Each Offeror may provide an organizational chart of the management team showing all personnel that will be involved in performing the requirements of the resultant contract, if any.

Each Offeror shall provide three (3) references from Public Safety jurisdictions who have used the same system within the past three (3) years. Reference should include, at the minimum, a name of a jurisdiction, and a name, phone number, and an e-mail of a representative involved in using the system. The County may also request additional information, clarification, or presentations from any of the Offerors.

Each Offeror shall provide evidence of a minimum of three (3) years' experience in providing services substantially similar to those being sought in this QuickQuote. Responses from any entity without such experience will not be considered.

Within three (3) business days of selection of the Successful Offeror, the Successful Offeror shall submit to the County a copy of its certificate of insurance in a form acceptable to the County.

VI.   EVALUATION CRITERIA

Offerors will be evaluated for selection on the basis of those most qualified to meet the requirements of this QuickQuote. Major criteria to be considered in the evaluation will include the items set forth below (**points in total equal 100**)

1. System capabilities, including functionality, ease of use, compatibility (**20 points**)

2. System reach, including the number and types of databases searched (**30 points**)

3. The Offeror's ability, capacity and skill to fully and satisfactorily provide the services or items required in this QuickQuote. (**10 points**)

4. Quality of response performance in comparable and/or similar projects as stated by offeror's references. (**10 points**)

5. Cost of services (**10 points**)

6. The Offeror's responsiveness and compliance with the requirements and conditions. (**10 points)**

Contract will be awarded to the Offeror whose proposal receives the highest number of points.

VII.   TERMS AND CONDITIONS

By responding to this QuickQuote request, Offeror accepts the QuickQuote Standard Terms and Conditions, which are uploaded to the eVA solicitation pages as a separate attachment. Terms and Conditions may only be modified by addendum to the solicitation issued prior to the closing date.

OFFEROR INFORMATION FORM

THE PROVISION OF WEB-BASED SYSTEM FOR BACKGROUND SCREENING OF APPLICANS TO ARLINGTON COUNTY POLICE ACADEMY

THE FULL <u>LEGAL NAME</u> OF THE ENTITY SUBMITTING THIS INFORMATION MUST BE TYPED OR WRITTEN IN THE SPACE BELOW. THIS PROPOSAL FORM AND ALL OTHER DOCUMENTS THAT REQUIRE A SIGNATURE MUST BE FULLY AND ACCURATELY COMPLETED BY A PERSON WHO IS AUTHORIZED TO BIND THE OFFEROR, OR THE PROPOSAL MAY BE REJECTED:

SUBMITTED BY:
(legal name of entity)

AUTHORIZED SIGNATURE:

PRINT NAME AND TITLE:

ADDRESS:

CITY/STATE/ZIP:

TELEPHONE NO.:   **E-MAIL ADDRESS:**

THIS ENTITY IS INCORPORATED IN:

THIS ENTITY IS A: *(check the applicable option)*	CORPORATION ❑	LIMITED PARTNERSHIP ❑
	GENERAL PARTNERSHIP ❑	UNINCORPORATED ASSOCIATION ❑
	LIMITED LIABILITY COMPANY ❑	SOLE PROPRIETORSHIP ❑

IS OFFEROR AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA?   YES ❑   NO ❑

IDENTIFICATION NO. ISSUED TO THE ENTITY BY THE SCC:

Any Offeror exempt from Virginia State Corporation Commission (SCC) authorization requirement must include a statement with its proposal explaining why it is not required to be so authorized.

ENTITY'S DUN & BRADSTREET D-U-N-S NUMBER: *(if available)*

IS YOUR FIRM OR ANY OF ITS PRINCIPALS CURRENTLY DEBARRED FROM SUBMITTING PROPOSALS TO ARLINGTON COUNTY, VIRGINIA, OR ANY OTHER STATE OR POLITICAL SUBDIVISION?   YES ❑   NO ❑

OFFEROR STATUS: MINORITY OWNED: ❑   WOMAN OWNED: ❑   NEITHER: ❑

THE UNDERSIGNED UNDERSTANDS AND ACKNOWLEDGES THE FOLLOWING:

THE OFFICIAL COPY OF THE SOLICITATION DOCUMENTS, WHICH INCLUDES ANY ADDENDA, IS THE ELECTRONIC COPY THAT IS AVAILABLE FROM THE COMMONWEALTH OF VIRGINIA'S eVA WEBSITE AT: HTTP://WWW.EVA.VIRGINIA.GOV.

POTENTIAL OFFERORS ARE RESPONSIBLE FOR DETERMINING THE ACCURACY AND COMPLETENESS OF ALL SOLICITATION DOCUMENTS THEY RECEIVE FROM ANY SOURCE, INCLUDING THE COUNTY.

1. OFFEROR MUST SUBMIT THIS FORM ELECTNROICALLY THORUGH EVA ALONG WITH ANY ATTACHMENTS.

2. INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO QUESTIONS REGARDING THIS PROPOSAL.

NAME (PRINTED): _____   TITLE: _____

E-MAIL ADDRESS: _____   TEL. NO.: _____

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by an Offeror in connection with a procurement transaction will not be subject to public disclosure under the Virginia Freedom of Information Act. Pursuant to Section 4-111 of the Arlington County Purchasing Resolution, however, an Offeror seeking to protect submitted data or materials from disclosure must, before or upon submission of the data or materials, identify the data or materials to be protected and state the reasons why protection is necessary.

Please mark one:

❑ No, the proposal that I have submitted does not contain any trade secrets and/or proprietary information.

❑ Yes, the proposal that I have submitted does contain trade secrets and/or proprietary information.

If Yes, you must clearly identify below the exact data or materials to be protected and list all applicable page numbers, sections, and paragraphs, of the proposal that contain such data or materials:

_____

_____

_____

_____

State the specific reason(s) why protection is necessary and why the identified information constitutes a trade secret or is proprietary:

_____

Arlington County QuickQuote –Employment Applicant Screening System for ACPD
Page 6

_____

_____

_____

If you fail above to identify the data or materials to be protected or to state the reason(s) why protection is necessary, you will not have invoked the protection of Section 4-111 of the Purchasing Resolution. Accordingly, upon the award of a contract, the proposal will be open for public inspection consistent with applicable law.

CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES
Provide the name and address of the person who is designated to receive notices and other communications regarding this solicitation. Refer to the "Notices" section in the draft Contract Terms and Conditions for information regarding delivery of notices.

NAME: _____

ADDRESS: _____

_____

E-MAIL: _____

Addendum A to QuickQuote 237251

Employment Applicant Screening System for ACPD

The solicitation is amended as follows:

    I.   Submission deadline extended until <u>3:00PM EST on February 9, 2021</u>.

    II.   Corrected the Scope of Work document to reference QuickQuote number "237251" to match the solicitation number in eVA.

    III.   Corrected the Offeror Information form to <u>remove</u> references to hand signature, and in-person delivery of the proposal. <u>Proposals shall be submitted electronically via eVA</u>.

    IV.   The following questions have been received:

1. Who is the current vendor for these reports?
   Response: ACPD does not currently use a web based background screening system. HR section manually makes background inquiries through various databases.

2. Is an integration with NeoGov a requirement or, at the very least, a preference for this bid?
   Response: Integration with NeoGov is not a requirement, and not preferred.

3. What are the current costs for services?
   Response: Currently this is done by ACPD staff, see question 1.

4. What is the average turnaround time for the reports?
   Response: Our current turnaround time is 6 – 8 weeks from testing to hire. Offerors shall indicate the turnaround time they can maintain. Faster turnaround times will receive a higher evaluation score.

5. What does the current vendor list of databases consist of in full?
   Response: None, see above. Offerors with acces to most relevant and extensive network of databases will receive a higher score than those with fewer databases.

6. Whether companies from Outside USA can apply for this? (like, from India or Canada)
   Response: Yes, as long as they have access to the US databases, are compliant with the Terms and Conditions of the QuickQUote, and are licenses to do business in Virginia by VA FCC.

7. Whether we need to come over there for meetings?
   Response: No in-person attendance will be required from Contractor, however virtual or in – person training may be required during the onboarding process.

8. Can we perform the tasks (related to RFP) outside USA? (like, from India or Canada)
   Response: System can be maintained from outside of USA as long as Contractor meets all applicable US federal and state regulations.

9. Can we submit the proposals via email?
   Response: Offerors shall make an attempt to submit the proposals through eVA. Submission through e-mail is allowed only in case of technical difficulties that cannot be resolved by the eVA Help Desk.

Addendum A to QuickQuote for **Employment Applicant Screening System for ACPD**