19-M0003-KEL01

STATE OF NEW JERSEY
AMENDMENT to Software Publisher/Service Provider Agreement

THIS AMENDMENT ("Amendment") to the State of New Jersey's M0003 Software Publisher/Service Provider Agreement ("M0003 Agreement") is made effective as of the last date signed below ("effective date"), by and between Kelmar Associates, LLC ("Provider"), whose principal place of business is 500 Edgewater Drive, Suite 525, Wakefield, MA 01880, and the State of New Jersey, Department of the Treasury, Division of Purchase and Property whose address is 33 West State Street, 8th Floor, P.O. Box 230, Trenton, New Jersey 08625, on behalf of the Authorized Purchaser (collectively "State").

WHEREAS, the State and Provider desire to amend certain provisions of the State of New Jersey Software Publisher/Services Provider Agreement as more fully described below by entering into this Amendment; and

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. Notwithstanding anything to the contrary in any of Provider's Standard Form Agreement ("SFA") listed below, the entire agreement between the parties shall consist of the following documents (which shall be collectively referred to as the "contract"):

    a. This STATE OF NEW JERSEY AMENDMENT to State of New Jersey M0003 Software Publisher/Service Provider Agreement ("Amendment"),
    b. State of New Jersey M0003 Software Publisher/Service Provider Agreement ("M0003 Agreement"), attached hereto as Exhibit 1;
    c. State of New Jersey's NJCCIC System Security Plan Questionnaire, prepared by Provider and approved by the State, incorporated herein as Exhibit 2;
    d. The Provider's Standard Form Agreement ("SFA"), entitled "KAPS Master Software License, Maintenance and Support Agreement" attached hereto as Exhibit 3;
    e. All Scope of Work ("SOW") documents agreed upon by the parties for services to be performed by Provider for the Authorized Purchaser during the term of the Agreement; and
    f. All purchase orders submitted by the State to Reseller under the M0003 Software Reseller Contract for Provider's products and services during the term of the contract.

    In the event of a conflict in the terms and conditions among the documents comprising the contract, the above order shall prevail for purposes of the interpretation thereof (listed from highest ranking to lowest ranking).

2. **Scope** – The scope of the contract includes Provider's software, technical support, software related services, Software as a Solution, and appliances acquired by the State under the State's Software Reseller Contract (M0003).

3. **Term** – The State may place orders with Reseller for Provider's qualifying products and services under the contract for three (3) years from the effective date, with three (3) options to extend the term for an additional one (1) year each, subject to the mutual written consent of the Provider and the Director of the Division of Purchase and Property at the same terms and conditions of the original contract.

4. **TERMS RELATING TO PAYMENT** - Notwithstanding anything to the contrary in Provider's SFA, Provider shall submit invoices to Reseller for products and services purchased by the Authorized Purchaser. The Authorized Purchaser will make payment to Reseller. The Authorized Purchaser will not make payment directly to Provider. Provider is hereby advised of the following payment terms that are in place between the State and each of its Resellers which take precedence over payment terms included in Provider's SFA and/or SOW:

    Tax Charges: The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

New Jersey Prompt Payment Act: The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds $5.00 per properly executed invoice.

5. **Section 1, STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**
   a. Deleted Section 1 in the M0003 Agreement in its entirety.

6. **Section 3.2, COMPLIANCE WITH ACCESSIBILITY STANDARDS**
   a. Amended the paragraph to clarify the application of Section 4.1.

7. **Section 4.1.1, LIMITATION OF LIABILITY**
   a. Amended sub-section (b) regarding provider liability for special, consequential, exemplary, indirect or incidental damages

8. **Section 5.7, TERMINATION OF CONTRACT**
   a. Amended sub-section (a) regarding the Director's notice to the Provider to terminate for convenience
   b. Amended sub-section (b)(1) regarding termination for Cause
   c. Amended sub-section (e) regarding the ability to cure.

9. **Section 5.11, PROVIDER WARRANTIES**
   a. Amended sub-section (a)(1) regarding the duration of provider warranties
   b. Amended sub-section (a)(3) regarding the State's remedies and Provider's liability
   c. Amended sub-section (b)(2) regarding the State's remedies and Provider's liability
   d. Amended sub-section (c) regarding the warranty provisions

10. **Section 7.1, CONFIDENTIALITY**
    a. Amended sub-section (a) to require compliance with sub-section (f) concerning notice to the Provider
    b. Amended sub-section (b) regarding confidentiality
    c. Amended sub-section (g) regarding Provider's obligation to protect State confidential information

11. **Section 7.2, OWNERSHIP**
    a. Amended sub-section (a) regarding Provider Intellectual Property
    b. Amended sub-section (b) regarding publicity and/or public announcements

12. **Section 7.3, AUDIT DISPUTE RESOLUTION –** Delete Section 7.3, Audit Dispute Resolution in its entirety and replace with the following:

7.3 AUDIT NOTICE AND RESOLUTION -

a. AUDIT NOTICE – Notwithstanding anything to the contrary in Provider's Standard Form Agreement ("SFA"), in the event that the Provider seeks to exercise a right in its SFA to audit the State's use of Provider Intellectual Property, Contractor shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the Provider's notice provides a longer notice period), to:

1. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:
   Procurement Bureau, Technology Unit
   P.O. Box 230
   Trenton, NJ 08625-0230

2. the Chief Technology Officer of the New Jersey Office of Information Technology:
   Office of the Chief Technology Officer

300 Riverview Plaza
Trenton, NJ 08625

3. and the State Contract Manager,
Lynne Gash
Office of Information Technology
300 Riverview Plaza
Trenton, NJ 08625

The notice shall reference the specific audit provision(s) in Provider's SFA being exercised and include copies of same, specify the means by which the Provider will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.

Notwithstanding the foregoing, the parties acknowledge and agree that the notice conditions contained in this Section 7.3(a) shall not apply to audits conducted in connection with the enforcement of the subscription terms and conditions for the KAPS® LN Services as set forth in Exhibit C of Provider's SFA.

b. AUDIT DISPUTE RESOLUTION -- If the State, in good faith, provides Provider with written notice of an alleged error in the amount of underpaid fees due Provider as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the contract while they endeavor to resolve the dispute under this paragraph. Provider reserves its right to terminate the Contract if informal discussions fail to resolve the dispute and fees due remain unpaid.
c. STATE NOT LIABLE FOR AUDIT COSTS -- Notwithstanding anything to the contrary in Provider's SFA, the State will not pay or reimburse Provider for any costs related to an audit.
d. NO AUDIT RIGHT CREATED -- In the event that the Provider's SFA does not permit audits of the State's usage of Provider Intellectual Property Section 7.3 of these terms shall not be interpreted to provide such an audit right.

13. **Section 8.4, SUSPENSION OF WORK**
    a. Amended Section 8.4 with respect to the resumption of work

14. **No auto-renewal –** Notwithstanding anything to the contrary in Provider's SFA and/or SOW, the State does not agree to auto-renewal of standard software maintenance, technical support or service fees.

15. **No arbitration –** Notwithstanding anything to the contrary in Provider's SFA and/or SOW, the State does not agree to arbitration.

16. **Terms and Conditions** - The parties agree to be bound by all other terms and conditions of the contract not otherwise modified by this Amendment.

17. **Execution of Amendment** - The parties hereto agree that this Amendment may be executed in counterpart, each original signed page to become part of the original document.

IN WITNESS WHEREOF, authorized representatives of Provider and the State have executed this Amendment to be effective as of the latest date provided below.

State of New Jersey,
Department of ~~the Treasury,~~
Division of Purchase and Property

Rachel Doobrajh, Esq.
~~Assistant~~ Division Counsel

Date 1/10/19

Kelmar Associates, LLC

Signature

David P. Kennedy
Print Name

General Counsel & Member
Print Title

December 10, 2018
Date

EXHIBIT 1

State of New Jersey
M0003 Software Publisher/Services Provider
Terms and Conditions

1.0 DELETED

1.1 DEFINITIONS - The following definitions shall apply:

a. The term "Acceptance" means the written confirmation by an Authorized Purchaser that Provider has completed Services according to the specified requirements.

b. An "Authorized Purchaser" means:

(i) any government agency, department, office, instrumentality, division, unit or other entity of the State;

(ii) any county, borough, city, municipality, town, township, special purpose district, or other political subdivision of the State;

(iii) Quasi-state agencies as defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member; and

(iv) School districts per N.J.S.A. 52:25-16.1;

(v) Volunteer fire departments, volunteer first aid squads and rescue squads per N.J.S.A. 52:25-16.2; and

(vi) Independent institutions of higher education per N.J.S.A. 52:25-16.5;

(vii) County colleges per N.J.S.A. 18A:64A-25.9; and

(viii) State colleges per N.J.S.A. 18A:64-60

(ix) Or any legal successor in interest to any entity above.

c. The term "Commercial Off the Shelf Software" or "COTS" means Software provided by Provider that is commercially available and that can be used with little or no modification.

d. The term "Customized Software" means COTS that is adapted or configured by Provider to meet specific requirements of the Authorized Purchaser that differ from the standard requirements of the base product.

e. The term "Contract," as used herein, means these Terms and Conditions, the SFA, SOW, and the order placed by the State and/or Authorized Purchaser and encompasses the Provider's delivery of software and/or services under such order.

f. The terms "goods" and "products" as used herein, shall be deemed to include Software, Software licenses, SaaS, Software maintenance and technical support, and software packaged with hardware as an appliance.

g. The term "Provider" means the Software Publisher and/or Services Provider and its employees, subcontractors, agents and affiliates who are providing the products and services agreed to under the Contract.

h. The term "Reseller" means any one of the contractors holding a valid contract under the State's Software Reseller and Related Services contract or an equivalent contract.

i. The term "Scope of Work" or "SOW" as used herein, means a document that defines the work activities, timeline and estimated cost associated with Software Related Services.

j. The term "Software Related Services" and "Services" shall mean installation, configuration, customization of COTS and training.

k. The term "Software" means, without limitation, computer programs, source codes, routines, or subroutines supplied by Provider, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, Customized Software, unless the context indicates otherwise.

l. The term "Software as a Solution" ("SaaS") means the capability provided to a purchaser to use the Provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface. The purchaser does not manage or control the underlying cloud infrastructure, including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

2. LAW REQUIRING MANDATORY COMPLIANCE - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION - Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The Provider shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The Provider shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The Provider and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

2.2 ANTI-DISCRIMINATION - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached).

The Provider or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.3 ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the Provider must agree as follows:

a. The Provider or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Provider will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
b. The Provider or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

c. The Provider or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Provider's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all Providers and subcontractors, if any, to further agree as follows;

1. The Provider or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. The Provider or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. The Provider or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, the Provider or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

2.4 **AMERICANS WITH DISABILITIES ACT** - The Provider must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.5 **MACBRIDE PRINCIPLES** - The Provider must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.6 **PAY TO PLAY PROHIBITIONS** - Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

a. make or solicit a contribution in violation of the statute;
b. knowingly conceal or misrepresent a contribution given or received;
c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee;
e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 **POLITICAL CONTRIBUTION DISCLOSURE** - The Provider is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the Provider receives one or more contracts valued at $50,000.00 or more. It is the Provider's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at http://www.elec.state.nj.us/.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on Provider activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL PROVIDERS SET-OFF FOR STATE TAX NOTICE - Pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE – LAWS - the Provider must comply with all local, State and Federal laws, rules and regulations applicable to this Contract and to the Software and/or Services provided hereunder. The Provider must comply with all State and Federal data and privacy laws, rules and regulations applicable to Provider under the Contract.

2.11 OWNERSHIP DISCLOSURE - In accordance with N.J.S.A. 52:25-24.2, Provider shall disclose the names and addresses of all of its owners holding 10% or more of the corporation's stock or interest during the term of the Contract, by submitting an Ownership Disclosure Form prior to execution of the Contract. The Provider has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.

In the alternative, N.J.S.A. 52:25-24.2 allows a Provider and/or any direct or indirect parent entity which is publicly traded to comply with this section by submitting the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, by submitting links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

2.12 **PROHIBITED INVESTMENT IN IRAN** - Pursuant to N.J.S.A. 52:32-55 et seq., the Provider must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Provider, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Provider, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Provider is unable to so certify, the Provider shall provide a detailed and precise description of such activities as directed on the form.

2.13 **WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS** - As required by N.J.S.A. 52:34-15, the Provider warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Provider for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.14 **ORGAN DONATION** - As required by N.J.S.A. 52:32-33.1, the State encourages Provider to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

3. LAW REQUIRING MANDATORY COMPLIANCE BY PROVIDERS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 **BUY AMERICAN** - Pursuant to N.J.S.A. 52:32-1, if applicable to the Contract, if manufactured items or farm products will be provided under this Contract to be used in a public work, they shall be manufactured or produced in the United States and the Provider shall be required to so certify.

3.2 **COMPLIANCE WITH ACCESSIBILITY STANDARDS** - The Provider acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Provider agrees that any information that it provides to the State or to an Authorized Purchaser in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Provider agrees to provide the State or Authorized Purchaser with technical information available to support such VPAT documentation in the event that the State or an Authorized Purchaser relied on any of Provider's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Provider shall defend any claims against the State or an Authorized Purchaser that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State and Authorized Purchaser with regard to any claim made against the State or Authorized Purchaser with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Provider's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

4. INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

A. **PROVIDER RESPONSIBILITIES** - The Provider's liability to the State and its employees in third party suits shall be as follows:

1. The Provider shall indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
   i. For or on account of the loss of life, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the Contract or the order; and
   ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the Contract; and
   iii. The Provider's indemnification and liability under subsection (1) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.
2. In the event of a claim or suit involving third-party Intellectual Property Rights, the Provider, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify Provider in writing of the claim or suit; (2) Provider shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Provider at its expense. Furthermore, neither Provider nor any attorney engaged by Provider shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
3. Notwithstanding the foregoing, Provider has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under this Contract with any product, device, or software not supplied by Provider; (2) the State's unauthorized alteration or modification of any product supplied under this Contract; (3) the Provider's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Provider with such designs, specifications, requests, or instructions, Provider reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Provider to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update, use a new version of the product, or to make a change or modification to the product if requested in writing by Provider.
4. Provider will be relieved of its responsibilities under Subsection 4.1(A)(1)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
5. This section states the entire obligation of Provider and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Provider disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
6. The provisions of this indemnification clause shall in no way limit the Provider's obligations assumed in the Contract, nor shall they be construed to relieve the Provider from any liability, nor preclude the State from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.
7. The Provider agrees that any approval by the State or Authorized Purchaser of the work performed and/or reports, plans or specifications provided by the Provider shall not operate to limit the obligations of the Provider assumed in the Contract.

8. The State of New Jersey will not indemnify, defend, or hold harmless the Provider. The State will not pay or reimburse for claims absent compliance with Section 4.1(B) of the Terms and Conditions and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

B. **STATE RESPONSIBILITIES** - Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 4.1(A)(1)(i) and (ii) which results in an unaffiliated third party claim. This is Provider's exclusive remedy for these claims.

4.1.1 LIMITATION OF LIABILITY

a. The Provider's liability for actual, direct damages resulting from the Provider's performance or non-performance of, or in any manner related to, the Contract for any and all third party claims, shall be limited in the aggregate to 200% of the fees paid by the Authorized Purchaser(s) during the previous twelve months to Provider for the products or services giving rise to such damages. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than $100,000. This limitation of liability shall not apply to the following:
   i. The Provider's indemnification obligations as described in Section 4.1; and
   ii. The Provider's breach of its obligations of confidentiality described in Section 7.1; and

b. The Provider shall not be liable for special, consequential, exemplary, indirect or incidental damages (including without limitation business interruption damages or expenses, the costs of substitute software or services, or the loss of goodwill or profit in connection with the supply, use or performance of or inability to use the Services, Software Deliverables or Documentation).

4.2 INSURANCE - The Provider shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the Provider's insurer cannot provide 30 days written notice, then it will become the obligation of the Provider to provide the same. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the Contract number or purchase order number and title of the Contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at:

ccau.certificate@treas.state.nj.us

The insurance to be provided by the Provider shall be as follows:

a. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be $1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.

b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than $1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property

c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

   $1,000,000 BODILY INJURY, EACH OCCURRENCE;
   $1,000,000 DISEASE EACH EMPLOYEE; and

$1,000,000 DISEASE AGGREGATE LIMIT.

d. Professional Liability Insurance: The Provider shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance to protect the Provider from insured liability arising out of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of $5,000,000 per claim and in the aggregate. If the Provider has claims-made coverage and subsequently changes carriers during the term of the Contract, the new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice shall provide for retroactive coverage to the inception date of this Contract or earlier.

Notwithstanding anything to the contrary herein, Provider may meet the above insurance requirements via commercial insurance, self-insurance, or a combination of these options at Provider's sole discretion. In addition, any combination of Primary, Umbrella, or Excess Liability policies may be used to meet any coverage or limits requirements listed above.

5. TERMS GOVERNING ALL CONTRACTS

5.1 PROVIDER IS INDEPENDENT CONTRACTOR - The Provider's status shall be that of any independent Provider and not as an employee of the State.

5.2 to 5.6 RESERVED

5.7 TERMINATION OF CONTRACT

a. For Convenience
   1. Notwithstanding any provision or language in this Contract to the contrary, the Director may terminate this Contract at any time, in whole or in part, for the convenience of the State, upon no less than forrty-five (45) days written notice to the Provider.
   2. The Provider shall have no right to terminate for convenience.

b. For Cause
   1. Where the Provider fails to materially perform or comply with a Contract or a portion thereof, the Director may terminate the Contract, in whole or in part, after providing written notice to Provider detailing the alleged breach and allowing an opportunity to cure of no less than thirty (30 days). Additionally, in the event the Provider fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the Contract, in whole or in part, upon ten (10) days' notice to the Provider with an opportunity to respond.
   2. Where in the reasonable opinion of the Director, a Provider continues to perform a Contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Provider to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the Contract, in whole or in part, upon thirty (30) days' notice to the Provider with an opportunity to respond prior to termination.

c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.

d. With respect to Software Related Services, in the event of termination under Section 5.7 of these Terms and Conditions, the Provider shall be compensated for work performed in accordance with the SOW, up to the date of termination. Such compensation may be subject to adjustments. With respect to advance payment of license, technical support, maintenance, and subscription fees ("pre-paid fees"), in the event of termination under Section 5.7(b) of these Terms and Conditions, the State shall receive a pro-rata refund of any unused pre-paid fees. For termination under Section 5.7(a)(1), the State shall not receive a refund of pre-paid fees actually paid to Provider and will not have liability for quotes provided for future products and Services.

e. Notwithstanding anything to the contrary contained herein, if an Authorized Purchaser violates its obligations under the Contract, the Provider may terminate the license(s) or cancel order(s) of such violating Authorized Purchaser only, after providing written notice and an opportunity to cure of no less than thirty (30) days except that no such cure period shall apply where the Authorized Purchaser has violated the license conditions set forth in Section 3 and 4 of Provider's SFA including specifically, those terms and conditions set forth in **Exhibit E** of Provider's SFA.

f. If the Provider terminates license(s) or cancels order(s) of a violating Authorized Purchaser, it shall nonetheless continue to perform its obligations under this Contract with respect to the State and the other non-violating Authorized Purchasers.

5.8 SUBCONTRACTING OR ASSIGNMENT

a. Subcontracting:

1. If the SOW lists services to be provided by named subcontractors, then the State's execution of the Contract constitutes the Director's prior approval of those named subcontractors. The Provider is responsible for ensuring subcontractor compliance with applicable State law requirements for subcontractors. As used in this Section 5.8(a), "Applicable State Law Requirements" for subcontractors shall mean Section 2.1, Business Registration, Section 2.2, Anti-Discrimination, and Section 2.3, Additional Affirmative Action Requirements.

2. If the SOW lists services to be provided by named subcontractors, the Provider may not substitute another subcontractor without the prior written consent of the Director and until the Applicable State Law Requirements for subcontractors are met.

3. The Provider may not subcontract any listed services in the SOW which were previously to be provided by the Provider without the prior written consent of the Director and until the Applicable State Law Requirements for subcontractors are met.

4. If at the time of the execution of the Contract, the Provider is generally utilizing a subcontractor to provide technical support and/or other non-Contract related services to its customers, such subcontractor need not be disclosed, and the Provider may substitute a different subcontractor without the Director's prior approval. For the avoidance of doubt, subcontractors providing Software Related Services under the Contract must be disclosed as required in 5.8(a)(1) – 5.8(a)(3) above and such subcontractors must comply with the Applicable State Law Requirements for subcontractors.

5. Regardless of whether subcontractor prior approval is required or given, the Provider shall remain fully responsible for the subcontractors' (i) performance; (ii) compliance with all of the terms and conditions of the Contract and (iii) compliance with the requirements of all applicable laws.

b. Assignment: The Provider may not assign its responsibilities under the Contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE - Nothing contained in any of the Contract documents, including the SOW, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS - If, during the term of this Contract, the Provider shall merge with or be acquired by another firm, the Provider shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The Provider shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded Provider and new entity ratifying acceptance of the original Contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the Contract for cause.

If, at any time during the term of the Contract, the Provider's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the Contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PROVIDER WARRANTIES

a. COTS and Customized Software

1. Unless the Provider's SFA provides greater coverage as determined by the State in its sole discretion, Provider warrants that COTS and Customized Software licensed to the State shall operate in all material respects as described in the SOW and/or Provider technical documentation for ninety (90) days after installation of COTS or Acceptance of Customized Software. The State shall notify Provider of any COTS or Customized Software product deficiency within ninety (90) days after Acceptance.
2. Except for the portion of Provider's COTS or Customized Software product that intentionally contains one or more of the following for the purpose of anti-virus protection, Provider warrants that, at the time of delivery and installation of the COTS or Customized Software provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that may hamper performance of the COTS or Customized Software, collect unlawful personally identifiable information on users, or prevent such COTS or Customized Software from performing as required under the Contract.
3. In the event of any breach of this warranty, the Provider shall correct the product errors that caused the breach of warranty, or if Provider cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to Provider for the license and any unused, pre-paid technical support or subscription fees. Under no circumstances does this warranty provision limit the Provider's obligation in the event of a breach of confidentiality.
4. Provider does not warrant that COTS or Customized Software is error-free or that it will operate uninterrupted.

b. Software Related Services

1. Unless the Provider's SFA or the SOW provides greater coverage, as determined by the State in its sole discretion, Provider warrants that all Services will be provided in a professional manner consistent with industry standards. The State shall notify Provider of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.
2. In the event of any breach of this warranty, the Provider shall re-perform the deficient Services, or if Provider cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Provider for the deficient Services.

c. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

5.12 APPLICABLE LAW AND JURISDICTION - This Contract and all contracts and/or orders hereunder shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the applicable laws, regulations and rules of evidence of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

5.13 CONTRACT AMENDMENT - Except as provided herein, the Contract may only be amended by written agreement of the State and the Provider.

5.14 MAINTENANCE OF RECORDS - The Provider shall maintain records for products and/or services delivered against the Contract for a period of five (5) years from the date of final payment. Such records shall be made available to the State, including the Comptroller, for audit and review.

5.15 ASSIGNMENT OF ANTITRUST CLAIM(S) - The Provider recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Contract, the Provider, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Contract.

In connection with this assignment, the following are the express obligations of the Provider:

a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
b. It shall advise the Attorney General of New Jersey:
   1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
   2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s).
c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Provider has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Provider, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. **TERMS RELATING TO PRICE AND PAYMENT** - The Provider shall submit invoices to Reseller for products and services purchased by the State or Authorized Reseller, as applicable. The State or Authorized Reseller will make payment to the State's Reseller. The State will not make payment directly to Provider. While these Terms and Conditions are independent of, and do not amend the agreements between Provider and Reseller, Provider is hereby advised of the following payment terms that are in place between the State and each of its Resellers which take precedence over payment terms included in Provider's SFA or SOW:

   a. **TAX CHARGES** - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

   b. **NEW JERSEY PROMPT PAYMENT ACT** - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds $5.00 per properly executed invoice.

   c. **APPROPRIATION AND AVAILABILITY OF FUNDS** – The State's obligation to make payment under this Contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for Contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

   For the avoidance of doubt, the issuance of a State payment voucher or other State issued payment document shall not signify that an appropriation has been made or that the funds are available.

7. MISCELLANEOUS

7.1 CONFIDENTIALITY

a. The State's obligation to maintain the confidentiality of Provider's confidential information provided to the State under the Contract is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 *et seq.*, ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
b. By virtue of the contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the contract. Provider's confidential information, to the extent not expressly prohibited by law, shall consist of all information whether disclosed orally or in written (including electronic) form or otherwise, that is clearly identified as confidential at the time of disclosure ("Provider Confidential Information"). For the avoidance of doubt, and without limitation, the State expressly acknowledges and agrees that the Software Deliverables (as defined in Provider's SFA), and the Source Code (as defined in Provider's SFA) shall be deemed Provider Confidential Information. Notwithstanding the previous sentence, the Provider acknowledges the terms and pricing of the

contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.

c. The Provider shall treat as Confidential Information all information or data in any form whatsoever supplied by the State, any information or data gathered by the Provider in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not).

d. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information or data is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

e. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care used to protect their own confidential information.

f. In the event that the State receives a request for Provider Confidential Information related to the Contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Provider with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Provider shall take any action it deems appropriate to protect its documents and/or information.

g. In addition, in the event Provider receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Provider shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Provider's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Provider of its obligation to take action to protect such information if the Provider is aware of a legal reason to do so.

h. Notwithstanding the requirements of nondisclosure described in this Section 7.1, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Provider does not exercise its rights as described in subsection 7.1(f), or if Provider is unsuccessful in defending its rights as described in subsection 7.1(f), or (iv) in the case of Provider, if Provider determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection 7.1(g), or if the State is unsuccessful in defending its rights as described in subsection 7.1(g).

7.2 OWNERSHIP

a. Provider Intellectual Property – For purposes of this provision, Provider Intellectual Property means any intellectual property that is owned by Provider and supplied to the State under the Contract. Provider retains ownership of all Provider Intellectual Property, and any modifications, configurations, and derivatives thereto. Provider grants the State a limited, nontransferable, non-exclusive license to use Provider Intellectual Property as set forth in Provider's SLA. The Provider's license to the State is limited by the term of the contract and the confidentiality obligations set forth in Section 7.1 of these Terms and Conditions.

b. State Intellectual Property – For purposes of this provision, State Intellectual Property includes any intellectual property owned by the State. The State retains ownership of all State Intellectual Property provided to Provider pursuant to the Contract. The State grants Provider a non-exclusive, royalty-free, license to use, copy, display, distribute, transit and prepare derivative works of State Intellectual Property and State data and background information only to fulfill the purposes of the Contract. The State's license to Provider is limited by the term of the Contract and the confidentiality obligations set forth in Section 7.1 of these Terms and Conditions. Furthermore, all of Provider's publicity and/or public announcements pertaining to this Contract shall be approved in writing by the State prior to release.

7.3 AUDIT NOTICE AND RESOLUTION

To the extent Provider's SFA and/or SOW permits Provider to conduct periodic audits of the State's usage of the Provider Intellectual Property provided thereunder, such provision is amended to include the following audit notice and dispute resolution process:

a. AUDIT NOTICE – Notwithstanding anything to the contrary in Provider's SOW or SFA, in the event that the Provider seeks to exercise a right in its SOW or SFA to audit the State's use of Provider Intellectual

Property, Provider shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the Provider's notice provides a longer notice period), to:

1. the Director of the New Jersey Department of Treasury, Division of Purchase and Property: Procurement Bureau, Technology Unit
   P.O. Box 230
   Trenton, New Jersey 08625-0230

2. the Chief Technology Officer of the New Jersey Office of Information Technology:
   Office of the Chief Technology Officer
   300 Riverview Plaza
   Trenton, New Jersey 08625

3. and the State Contract Manager.

The notice shall reference the specific audit provision(s) in Provider's SOW or SFA being exercised and include copies of same, specify the means by which the Provider will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.

b. AUDIT DISPUTE RESOLUTION -- If the State, in good faith, provides Provider with written notice of an alleged error in the amount of underpaid fees due Provider as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the Contract while they endeavor to resolve the dispute under this paragraph. All meetings and discussions between Representatives will be deemed confidential settlement discussions under Rule 408 of the New Jersey Rules of Evidence.

c. STATE NOT LIABLE FOR AUDIT COSTS -- Notwithstanding anything to the contrary in Provider's SOW or SFA, the State will not reimburse Provider for any costs related to an audit.

d. NO AUDIT RIGHT CREATED -- In the event that the Provider's SOW or SFA does not permit audits of the State's usage of Provider Intellectual Property Section 7.3 of these Terms and Conditions shall not be interpreted to provide such an audit right.

7.4 **REFERENCES TO EXTERNAL DOCUMENTATION** - Any external documentation incorporated by reference into Provider's SFA and/or SOW, including without limitation, Technical Reference Manuals, technical support policies, copyright notices, additional license terms, etc., are subject to these terms and conditions. In the event of any conflict between the terms of a document incorporated by reference into Provider's SFA and/or SOW, and these terms and conditions, these terms and conditions shall prevail.

7.5 **NO ARBITRATION** - Notwithstanding anything to the contrary in Provider's SFA and/or SOW, the State does not agree to arbitration.

7.6 **NO AUTO-RENEWAL** - Notwithstanding anything to the contrary in Provider's SFA and/or SOW, the State does not agree to auto-renewal of standard software maintenance, technical support or service fees.

8. TERMS GOVERNING CONTRACTS WITH A SCOPE OF WORK (SOW)

8.1 **COMPLIANCE – CODES** - The Provider must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The Provider shall be responsible for securing and paying all necessary permits, where applicable.

8.2 **STATE'S OPTION TO REDUCE SCOPE OF WORK** - The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under an SOW. In such an event, the Director shall provide to the Provider advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted SOW price. Within five (5) business days of receipt of such written notice, if either is applicable:

a. If the Provider does not agree with the Director's proposed adjusted SOW price, the Provider shall submit to the Director any additional information that the Provider believes impacts the adjusted SOW price with a request that the Director reconsider the proposed adjusted SOW price. The parties shall negotiate the adjusted SOW price. If the parties are unable to agree on an adjusted SOW price, the Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the final adjusted SOW price.

b. If the Provider has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted SOW, the Provider may seek to be compensated for such work effort according to the applicable portions of its price schedule and the Provider shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the compensation to be paid for such work effort.

8.3 CHANGE IN LAW - Whenever a change in applicable law or regulation affects the SOW, the Director shall provide written notice to the Provider of the change and the Director's determination as to the corresponding adjusted change in the SOW and corresponding adjusted SOW price. Within five (5) business days of receipt of such written notice, if either is applicable:

a. If the Provider does not agree with the adjusted SOW price, the Provider shall submit to the Director any additional information that the Provider believes impacts the adjusted SOW price with a request that the Director reconsider the adjusted SOW price. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the final adjusted SOW price.

b. If the Provider has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted SOW, the Provider may seek to be compensated for such work effort according to the applicable portions of its price schedule and the Provider shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the compensation to be paid for such work effort.

8.4 SUSPENSION OF WORK - The State may issue a stop order directing the Provider to suspend work under an SOW for a specific time. The Provider shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Provider shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Provider's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the SOW price. The Provider shall provide whatever information that Director may require related to the equitable adjustment.

I HEREBY ACCEPT THESE TERMS AND CONDITIONS:

David P Kennedy

SIGNATURE

David P. Kennedy

PRINT NAME

General Counsel & Member

TITLE

Yelmar Associates, LLC

COMPANY NAME

1/9/19

DATE

State of New Jersey
M0003 Software Publisher/Services Provider
Terms and Conditions

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the Provider agrees as follows:

The Provider or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Provider will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Provider or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Provider or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Provider's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Provider or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Provider or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The Provider or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Provider or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the Provider or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Provider shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The Provider and its subcontractors shall furnish such reports or other documents to the Division of Purchase an Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase an Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT 2

Vendor Requested Information Regarding Computer Hardware/Software/Networks

Vendor Requested Information Regarding Computer Hardware/Software/Networks

Vendor Requested Information Regarding Computer Hardware/Software/Networks

Vendor Requested Information Regarding Computer Hardware/Software/Networks

EXHIBIT 3

KAPS® Master Software License, Maintenance and Support Agreement

This KAPS® Master Software License, Maintenance and Support Agreement ("Agreement") is made and entered into as of this 10th day of December, 2018 by and between Kelmar Associates, LLC ("Kelmar"), a Delaware Limited Liability Company, having a principal place of business at 500 Edgewater Drive, Suite 525, Wakefield, MA 01880 and the State of New Jersey, Department of the Treasury, Unclaimed Property Administration (hereinafter the "State" or the "Treasury" or the "Licensee"), having a principal place of business located at 33 West Street, Trenton, NJ 08625-0230 (at times Kelmar and the State shall be individually referred to as a "Party" and collectively as the "Parties").

Whereas, Kelmar is the developer of, and has the right to license to others, certain computer software products.

Whereas, the State has agreed to license Kelmar's KAPS® software product (the "Software") and to receive maintenance and support services in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, Kelmar and the State, intending to be legally bound, hereby covenant and agree as follows:

1. DEFINITIONS.

Capitalized terms used in this Agreement, the Exhibits, and Schedules have the meaning set forth in **Exhibit A.**

2. LICENSE.

In accordance with the terms and conditions of this Agreement (inclusive of all Exhibits and Schedules attached hereto and incorporated herein by reference), Kelmar grants to the State, and the State accepts, a limited, nontransferable, non-exclusive, restricted license to use the Software under the terms and conditions stated herein for the State's use in the administration of its unclaimed property program and business related thereto. The grant of rights hereunder to license and utilize the Software is not a sale of the Software or any portion thereof, and does not convey any rights of ownership in the Software to the State. Kelmar reserves all rights not expressly granted by this Agreement and the State hereby agrees that all title and ownership of the Software and all Software Deliverables and associated intellectual property rights are and shall always remain with Kelmar except where expressly agreed otherwise by the Parties.

In connection with the license to utilize the Software, Kelmar shall grant the State a restricted license to utilize Kelmar's KAPS® LexisNexis® Instant Verify® and LexID® Identification Services ("KAPS® LN Services") on the terms and conditions set forth in **Exhibit C**, attached hereto and incorporated herein by reference.

3. LICENSE RESTRICTIONS.

This Agreement does not include the right to perform, and the State agrees to refrain from performing, the following: (i) selling, marketing, making copies, translations, adaptations, or modifications of or to the Software or any portion thereof, except as expressly agreed in writing by the Parties; and (ii) reverse-engineering, reverse-translating, disassembling, or decompiling the Software, the Software Deliverables or the Documentation or any portion thereof or attempting to do so, or otherwise attempting to discover the Source Code, and/or techniques incorporated into the Software, and that it shall not hire, direct, influence or aid any other person or entity to do or attempt to do the same. The State further agrees that it may not create any derivative work based upon the Software by altering, modifying, or translating the Source Code or any portion thereof, and that it shall not hire, direct, influence or aid any other person or entity to do or attempt to do the same.

4. SERVICES.

4.1 Scope of Services. Kelmar shall perform the services ("Services") for the State consisting of the implementation, maintenance and support of the Software as more fully set forth in **Exhibit B,** attached hereto and incorporated herein by reference.

4.1.1 Change Requests. The State reserves the right to request from time to time any changes to the requirements and specifications of the Services under the Agreement. If the State requests or directs Kelmar to perform any Additional Services beyond the scope of the Services set forth in **Exhibit B** (all such Additional Services to be hereinafter referred to as "New Work"), Kelmar shall, prior to performing any New Work, provide a detailed outline of all work to be done including tasks necessary to accomplish the New Work, timeframes, listing of key personnel assigned, the estimated hours for each individual per task, and the estimated overall cost of the New Work. Kelmar expressly agrees that it shall not perform any New Work until such time as approved in writing by the State. The approval of New Work shall be governed by the Change Request procedure set forth below:

a. Change Request at State Request: If the State requires Kelmar to perform New Work or make changes to the Services that would affect the Agreement completion schedule or the amount of compensation due Kelmar (a "Change"), the State shall submit a written request for Kelmar to furnish a proposal for carrying out the requested Change (a "Change Request").

b. Kelmar Recommendation for Change Requests: Kelmar shall be entitled to propose a Change to the State, on its own initiative, should Kelmar believe the proposed Change would benefit the State.

c. Upon receipt of a Change Request or on its own initiative, Kelmar shall examine the implications of the requested Change on the technical specifications and the Agreement schedule, and then price out the New Work. Kelmar shall then submit to the State, without undue delay, a written proposal for carrying out the Change. Kelmar's proposal shall include any associated changes in the technical specifications, Agreement schedule and price and method of pricing of the Services. If Kelmar provides a written proposal and should Kelmar be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

d. By giving Kelmar written notice within a reasonable time, the State shall be entitled to accept a Kelmar proposal for Change, to reject it, or to reach another agreement with Kelmar. Should the Parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Agreement, describing the Change and its effects on the Services and any affected components of this Agreement (a "Change Notice").

e. If the State requests or directs Kelmar to perform any services or provide deliverables that are consistent with and similar to the Services being provided by Kelmar under the Agreement, but which Kelmar reasonably and in good faith believes are not included within the scope of the Services, then before performing the activities, Kelmar shall notify the State in writing that it considers the requested activities to constitute a Change for which Kelmar should receive additional compensation. Along with the notice, Kelmar shall include a written proposal for carrying out the Change that identifies any associated changes in the technical specifications, the project schedule and the price for the New Work. If Kelmar fails to notify the State before beginning the New Work constituting a Change, then Kelmar shall waive any right to assert any claim for additional compensation or time for performing the requested activities. Upon receipt of Kelmar's notice, the State shall follow the procedure outlined in subsection (c) above.

f. No proposed Change shall be performed until the proposed Change has been specified in a duly executed Change Notice issued by the State and signed by the Parties.

4.2 Method of Performing Services. Kelmar, in conjunction with its principals, partners, directors and officers, employees, agents, consultants, and other of its representatives (collectively "Personnel"), will determine the method, details and means of performing the Services. Notwithstanding, Kelmar acknowledges and agrees that the Software shall comply with the system requirements set forth on **Exhibit 2** to the Contract - State of New Jersey's NJCCIC System Security Plan Questionnaire, prepared by Provider and approved by the State.

4.3 Kelmar Personnel. Kelmar shall, in its sole discretion, assign qualified Personnel to perform the Services contemplated under the Agreement. In so doing, Kelmar shall perform security and background checks on all of its Personnel: (a) working on the State's premises in connection with the Services, (b) handling the State's Confidential Information in connection with the Services; or (c) having access to the State's Confidential Information in connection with the Services. These security and background checks shall include, without limitation, employment, education and certification verification; a review of federal, state and county criminal records databases; a search through the national prison registry, parole board and federal administrative agency databases; as well as checks against the national sex offender data base. Kelmar shall require that its subcontractor employees (if any) that will handle or have access to the State's Confidential Information under this Agreement also complete security and background checks that meet and/or exceed the aforementioned requirements. Upon reasonable request, Kelmar shall provide satisfactory evidence of such security and background checks to the State.

Kelmar shall enforce separation of job duties amongst its Personnel and will require said individuals to execute commercially reasonable non-disclosure agreements prior to performing Services on behalf of the State. Kelmar shall also confirm that all Kelmar Personnel that may be engaged to perform the Services hereunder are legally authorized to work in the United States. Kelmar further agrees to provide a completed W-9 form prior to performing the Services for the State.

Notwithstanding the foregoing, the State may, at its sole expense, conduct reference and background screening of Kelmar Personnel: (a) working on the State's premises in connection with the Services, (b) handling the State's Confidential Information in connection with the Services; or (c) having access to the State's Confidential Information in connection with the Services. The State shall maintain the confidentiality of background screening results in accordance with the Agreement. The State shall also have the right at any time to require that Kelmar remove from interaction with the State any Kelmar Personnel who the State believes is detrimental to its working relationship with Kelmar. The State shall provide Kelmar with notice of its determination, and the reasons it requests the removal. If the State indicates that a potential security violation exists with respect to the request, Kelmar shall immediately remove such individual. Thereafter, Kelmar shall not assign the person at issue to any aspect of the Services without the State's prior written consent.

4.4 Location and Assistance. Kelmar may perform the Services at the State's premises, Kelmar's premises and/or its independent contractor's premises as Kelmar deems appropriate. The State shall provide Kelmar with reasonable access to the State's premises, personnel, hardware, computer equipment, software, and information during normal business hours to enable Kelmar to perform the Services. The State agrees to cooperate with Kelmar and to respond in a timely manner to all reasonable requests to facilitate Kelmar's delivery of the Services, subject to reasonable and customary security procedures that the State may require. To this end, the State acknowledges and agrees that the timely performance of the Services will require access to the State's data, information, business processes, test materials and computer systems. Accordingly, the State agrees to provide all such access and the reasonable and timely assistance of qualified personnel to perform such tasks as are reasonably requested of Kelmar. The unavailability of State personnel, failure of the State's personnel to achieve the tasks required to be performed by the State in an accurate, timely and professional manner may cause delays or a failure in the performance of the Services or Kelmar to fail to timely complete the Services or result in increased costs to Kelmar for which the State shall be responsible. Any failure or delay in Kelmar's performance shall be excused to the extent the failure or delay is caused by the State and/or its Personnel.

4.5 Technical Support. The State shall provide the following to facilitate the Services:

- Necessary and timely support for data extraction from legacy systems
- Technical support regarding interfaces to existing legacy systems
- Technical resources necessary to perform any customizations for the implemented modules
- Through its information technology staff, additional technical support on a reasonable as-needed basis
- One technical lead to conduct necessary tasks outlined above for the associated modules

5. NON-DISCLOSURE & CONFIDENTIALITY. Reserved. See Section 7.1 of the Software Publisher Services Provider Agreement attached to the Contract at Exhibit 1.

6. STRATEGIC BUSINESS PARTNERS.

Kelmar shall notify the State of all "Strategic Business Partners" related to the Services provided under this Agreement. Strategic Business Partners shall include any subcontractors or other entities or individuals who: (a) may be a party to a joint venture or similar agreement with Kelmar, or (b) will have access to or who are involved with the processing of the State's Data. All Strategic Business Partners shall be subject to the same background checks as outlined in Section 4.3 above; provided, however, that no such background checks shall be required of any employee of LexisNexis and its affiliates, or Melissa Data, Inc., merely as a result of Kelmar's contracts with those vendors to provide technology plug-ins and research capabilities within the KAPS® System.

7. WARRANTIES.

7.1 Kelmar Software Deliverables. Kelmar warrants and represents that (i) it has the power and authority and has taken all necessary corporate action to execute and deliver the Agreement and make it binding on Kelmar; (ii) it owns or has acquired rights to all proprietary interests in the Software Deliverable and Documentation necessary to grant the license set for the in this Agreement; and (iii) it has secured all licenses and permits necessary for performance of the Services and that the Services will be performed by qualified personnel in accordance with the appropriate level of care, skill and diligence customary in Kelmar's industry, trade, or profession and in accordance with all applicable laws, statutes, and regulations.

7.2 Warranty Period / Error Correction. Kelmar warrants that for a period of one hundred eighty (180) days from the date that Kelmar implements the Software Deliverable, or in the case of a Software Deliverable subject to acceptance testing under this Agreement from the date the Software Deliverable is deemed "Accepted", the Software Deliverable shall operate in substantial conformance with its Documentation or the Specifications, as applicable, and shall be free of material defects (the "Warranty Period"). If the Software Deliverable fails to conform to its Documentation or Specifications, or contains material defects during the Warranty Period, Kelmar's sole obligation and the State's sole remedy shall be for Kelmar to use reasonable commercial efforts to correct all Errors or replace the Software Deliverable.

Notwithstanding the foregoing, the warranty set forth in this Section 7.2 shall be void if the State or any third party (other than any person selected by Kelmar to act on Kelmar's behalf) modifies, adjusts or re-configures the Software Deliverable. Further, Kelmar shall not be responsible for correcting Errors resulting from misuse, negligence, revision, modification, or improper use by the State of the Software Deliverable or any portion thereof ("Misuse"); the State shall be responsible to pay Kelmar for services to correct Errors resulting from Misuse at Kelmar's standard rates as set forth on the purchase order submitted by the State to Reseller under the M0003 Software Reseller Contract that is in effect at the time services to correct the Error are performed. Kelmar does not warrant that operation of such Software Deliverables will be uninterrupted or error free. After the Warranty Period, all corrective efforts, design enhancements or other Software Deliverable modifications shall be governed by the provisions set forth in **Exhibit B.**

7.3 Third Party Materials. As between Kelmar and the State, all third party hardware and software are provided "AS IS" and without warranty of any kind. If Kelmar has the right to pass through to the State warranties made by any third party supplier with respect to the third party hardware or software, Kelmar will pass through such warranties. All such warranties will run directly between the State and the respective third party supplier.

7.4 Disclaimer. OTHER THAN AS EXPRESSLY PROVIDED ABOVE, KELMAR HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF SATISFACTORY QUALITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY AGAINST INFRINGEMENT. EXCEPT AS EXPRESSLY PROVIDED IN WRITING HEREIN, THERE IS NO WARRANTY THAT THE SOFTWARE DELIVERABLES OR ANY INFORMATION, COMPUTER PROGRAM, EFFORTS OR ANY SYSTEM PROVIDED BY KELMAR WILL FULFILL ANY PARTICULAR PURPOSES OR NEEDS OF THE STATE.

8.0 INTELLECTUAL PROPERTY.

The Software is being licensed, not sold. Kelmar retains all ownership rights in and to all Deliverables and Components of the KAPS® System. All United States and international copyrights, trade secrets, patentable inventions and trademarks incorporated into, or used in respect of, the Software Deliverables shall be and remain the sole property of Kelmar. If the State engages Kelmar to perform New Work, which may include programming or software development in respect of the Software Deliverables, then: (i) with respect to all work performed for the State by Kelmar, Kelmar shall be the author and owner of all copyrights, patents and trade secrets incorporated in such work (the "Licensee Work"); and (ii) the State shall have the same licenses set forth in Section 2 of the Agreement in respect of such Licensee Work.

9.0 RIGHTS IN DATA.

The State is the owner of all data made available by the State to Kelmar or its Personnel under the Agreement (hereinafter the "State's Data"). Neither Kelmar nor its Personnel shall use the State's

Data for any purpose other than providing the Services, nor will any part of the State's Data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or commercially exploited by or on behalf of Kelmar. Kelmar shall hold the State's Data in the strictest confidence and shall limit knowledge of the State's Data to those Kelmar Personnel having a need to know in connection with the performance of the Services. Kelmar shall protect the State's Data in the same manner in which it applies to its own confidential or proprietary information and materials of a similar nature. To this end, Kelmar shall encrypt all non-public State Data that resides on any Kelmar server or mobile devices or in transit during the life of the contract with 128-bit level encryption. Such encryption shall meet and/or exceed the State's requirements inclusive of those outlined in Exhibit 2 to the Contract. Kelmar will not possess or assert any lien or other right against the State's Data. Without limiting the generality of this Section, Kelmar will only use Personally Identifiable Information as strictly necessary to provide the Services and will disclose the information only to its Personnel who have a strict need-to-know the information. Kelmar will comply at all times with all laws and regulations applicable to the Personally Identifiable Information, and with the information security protocols set forth at Exhibit 2 to the Contract.

10.0 OWNERSHIP OF MATERIALS.

The State and Kelmar will continue to own their respective proprietary technologies developed before entering into the Agreement. Any hardware bought through Kelmar by the State, and paid for by the State, will be owned by the State. Any software licensed through Kelmar and sold to the State, will be licensed directly to the State.

11.0 INDEMNIFICATION. Reserved. See Section 4.1 of the Software Publisher Services Provider Agreement attached to the Contract at Exhibit 1.

12. LIMITATION OF LIABILITY. Reserved. See Section 4.1.1 of the Software Publisher Services Provider Agreement attached to the Contract at Exhibit 1.

13. FEES.

13.1 Service Fees. In consideration for performing the Services, the State shall pay Kelmar the annual license fee set forth on the purchase order submitted by the State to Reseller under the M0003 Software Reseller Contract. Where Kelmar performs New Work or Licensee Work beyond the Services, the State shall pay Kelmar's then-current hourly rates or such other fees as set forth on the purchase orders submitted by the State to Reseller under the M0003 Software Reseller Contract. Consistent with M0003 Software Reseller Contract, Kelmar shall submit invoices to the Reseller for the Services performed hereunder on a monthly basis. The monthly invoices will contain sufficient detail to support the services provided during the previous month.

13.2 Reimbursable Expenses. Reserved.

13.3 Taxes. The State is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use, and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

13.4 Invoice Disputes. In the event the State disputes a portion of the invoice, the State shall, within thirty (30) days of receipt of the invoice: (a) pay the undisputed portion of the invoice to Kelmar via the Reseller; and (b) provide Kelmar with a detailed statement of the State's position on the disputed portion of the invoice. The Parties shall then attempt to resolve the Dispute in accordance with the provisions outlined in Section 18 below.

13.5 Payment. The State shall pay to Kelmar via the Reseller the Fees and Reimbursable Expenses within the time period proscribed by New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., sixty (60) days. The State's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within sixty (60) days of receipt of the invoice shall entitle Kelmar to charge interest on the overdue portion at the lesser of 1.0% per month or 12% per annum, or the maximum amount allowed by law until paid in full.

13.6 Accounting Records. Kelmar shall maintain an accounting system in accordance with generally accepted accounting principles. The costs applicable to this Agreement shall be ascertainable from the accounting system and Kelmar shall maintain records pertaining to the Services and all other costs and expenditures in accordance with Section 17 below.

14. TERM & RENEWAL.

This Agreement shall be effective from the date of execution until three (3) years after the Effective Date, with three (3) options to extend for an additional one (1) year each under the same terms and conditions, subject to the mutual agreement by the Parties, unless sooner terminated by either Party. Fees due hereunder shall be assessed beginning on the Commencement Date. For purposes of this Agreement the term "Commencement Date" shall mean the date upon which the KAPS® System is placed into production for the State.

Not more than one hundred and eighty (180) days nor less than one hundred twenty (120) days before the expiration of the Agreement, Kelmar shall: (a) notify the State of Kelmar's intension not to renew the Agreement; **or** (b) present the State with an option to renew the Agreement detailing any increase in any fees or costs associated with the products or services contracted hereunder; **or** (c) present the State with a new contract for services detailing pricing inclusive of any increase in fees or costs associate with the new contract.

15. TERMINATION.

15.1 Termination for Cause. Reserved. See Section 5.7 of the Software Publisher Services Provider Agreement attached to the Contract at Exhibit 1.

15.2 Termination For Convenience. Reserved. See Section 5.7 of the Software Publisher Services Provider Agreement attached to the Contract at Exhibit 1.

15.3 Data Preservation and Transfer. In the event that this Agreement is terminated by either Party, Kelmar shall, within thirty (30) days, contact the State to arrange for the return of all State Data in Kelmar's possession in a mutually agreeable format including Microsoft SQL server database back up file with data dictionary, and within a mutually agreed upon time at no expense to the State. Kelmar shall cooperate to facilitate the return of the State's Data to the State or its successor provider of database management and technical support services (hereinafter the "Successor Provider"). Provided the State is not in material breach of the Agreement, Kelmar shall provide the State and its Successor Provider with transition services as the State deems are reasonably required beyond the database back-up file to facilitate orderly migration and transfer of responsibilities to the State and/or its Successor Provider (hereinafter "Transition Services"). All Transition Services reasonably requested in writing by the State shall be performed by Kelmar. Kelmar shall be compensated for Transition Services in accordance with the Hourly Rates set forth in the applicable purchase order submitted by the State to Reseller under the M0003 Software Reseller Contract that is in effect at the time the Transition Services are to be performed.

16. SURVIVAL OF TERMS.

Upon termination or expiration of the Agreement, the provisions of the Agreement providing for payment of Fees to Kelmar (to the extent any such payments are due when the Agreement is terminated or when it expires), protection of Kelmar's proprietary rights, the limitation of liability, compliance with laws, indemnities, use and protection of information, disclaimer of warranties, confidentiality, security, and other provisions of the Agreement concerning the ongoing interests of Kelmar and the State shall continue and survive in full force and effect.

17. AUDIT RIGHT.

Kelmar shall maintain books and records demonstrating its compliance with the terms and conditions of this Agreement including without limitation, accounting records; written policies and procedures; all Software Documentation; Change Requests and Change Orders; all paid invoices including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; change order files and supporting documentation; payroll documents; timesheets; memoranda; and correspondence. Such records shall be maintained by Kelmar until the last to occur of: (i) a period of five (5) years after the date this Agreement expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending contract matters, or (iv) if an audit is occurring, or Kelmar has received notice that an audit is pending, until such audit has been completed and its findings have been resolved. The State shall have the right to audit Kelmar's books and records to confirm Kelmar's compliance with the terms and conditions of the Agreement. Such records shall be made available to the State during Normal Working Hours at Kelmar's headquarters or other place of business and subject to a three (3) day prior written notice. Costs of any audits conducted under the authority of this Section 17 shall be borne by the State. In the event the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the State shall be entitled to recover the total costs of the audit as well as all other damages permitted at law.

18. DISPUTE RESOLUTION.

18.1 Informal Resolution. The Parties shall endeavor to amicably resolve any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, in accordance with the provisions of this Section 18. To this effect, they shall meet as often as the Parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the Parties believe to be appropriate and germane in connection with its resolution. The Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either Party concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

18.2. Arbitration. Reserved.

18.3 Continued Performance. Each Party agrees to continue performing its obligations under the Agreement while a dispute is being resolved pursuant to this Section 18 except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either Party's right to terminate the Agreement as provided in Section 15, as the case may be.

19. MISCELLANEOUS.

19.1 Parties Bound. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and each of their respective successors and assigns.

19.2 Independent Contractor. The relationship between the Parties is that of an independent contractor for all purposes, and the Parties acknowledge and agree that neither shall be involved in the management or operations of the other.

19.3 Assignment. Reserved. See Section 5.8 of the Software Publisher Services Provider Agreement attached to the Contract at Exhibit 1.

19.4 Severability. The provisions of this Agreement are independent of and separable from each other. In the event that any provision of this Agreement or any Exhibit or Schedule attached thereto is found invalid or unenforceable pursuant to judicial decree, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the Parties to the fullest extent allowed by law. If such provision cannot be modified or restricted in a manner so as to make such provisions valid, binding and enforceable, then such provision shall be deemed to be excised from this Agreement, and in any event, the remainder of this Agreement shall be valid and enforceable according to its terms and conditions.

19.5 Governing Law/Venue. Reserved. See Section 5.12 of the Software Publisher Services Provider Agreement attached to the Contract at Exhibit 1.

19.6 Entire Agreement. This Agreement including all exhibits attached hereto contains the entire understanding between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions expressed. The terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms other than by an agreement in writing.

19.7 Amendment. This Agreement may only be amended or modified in writing signed by the Parties hereto.

19.8 Waiver. Neither the failure nor any delay on the part of either Party to exercise any right, remedy or power or privilege under this Agreement shall operate as a waiver thereof. Nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any other occurrence.

19.9 Force Majeure. Except for the obligation of the State to make payments for Services rendered, neither Party shall be in default if any delay or failure to perform any obligation under this Agreement is caused by supervening conditions beyond that Party's control, and without the negligence of that Party, including but not limited to acts of God, war, terrorist attack, revolution, civil commotion, riot, fire, flood, disaster, acts of public enemies, blockade or embargo, strikes, any law, order, proclamation, regulation, ordinance, demand, or requirement having a legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to above, which is beyond the reasonable control of the party affected. If such situation occurs, the affected party will give prompt written notice to the other party and will use its best efforts to resume operations as soon as practicable. Notwithstanding the foregoing, if such act or condition beyond reasonable control continues for a period of one hundred eighty (180) days or more, the unaffected party may, on notice to the party affected, terminate the Agreement, and neither party shall have any further obligation to the other save for those provisions hereunder which, by their terms, survive the termination of the Agreement.

19.10 Disaster Recovery. Kelmar and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Kelmar Personnel dedicated to providing Services under this Agreement shall provide the State with priority restoration services for the Software in the event of a natural or man-made disaster. To achieve this objective, Kelmar shall maintain a comprehensive Business Continuity & Disaster Recovery Plan providing for the restoration of critical business functions without undue delay. At the State's request, Kelmar shall provide the State with a copy of its Business Continuity & Disaster Recovery Plan.

19.11 Notices. All notices or other communications required or permitted hereunder shall be sufficient if sent in writing: (i) by personal delivery; or (ii) by U.S. Postal Service Express Mail, UPS or Federal Express or other nationally recognized overnight delivery service with signature required on delivery; or (iii) by registered or certified mail, return receipt requested, postage prepaid, as follows (or to any other address as shall be set forth in a notice given in the same manner):

Notices to Kelmar shall be addressed to:

David P. Kennedy, General Counsel
Kelmar Associates, LLC
500 Edgewater Drive, Suite 525
Wakefield, MA 01880

Notices to the State shall be addressed to:

The Director of the New Jersey Department of Treasury, Division of Purchase and Property:
Procurement Bureau, Technology Unit
P.O. Box 230
Trenton, NJ 08625-0230

The Chief Technology Officer of the New Jersey Office of Information Technology:
Office of the Chief Technology Officer
300 Riverview Plaza
Trenton, NJ 08625

The State Contract Manager, Lynne Gash
Office of the Information Technology
300 Riverview Plaza
Trenton, NJ 08625

The Parties agree that either party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 19.11 for giving notice.

19.12 Headings. The section and subsection headings in the Agreement are inserted solely as a matter of convenience and for reference, and shall not be considered in the construction or interpretation of any section and/or subsection contained within the Agreement.

19.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the Parties have caused this KAPS® Master Software License, Maintenance and Support Agreement to be executed and delivered the day and year first above written.

State of New Jersey
Department of Treasury

By:
Name: Rachel Dabrajh, Esq.
Its: Division Counsel

Kelmar Associates, LLC

By:
Name: David P. Kennedy
Its: General Counsel & Member

EXHIBIT A: DEFINITIONS

KAPS® SOFTWARE

"Agreement" means the Master Software License and Maintenance Support Agreement and all schedules and exhibits thereto.

"Commencement Date" means the date on which the KAPS® System is placed into production on behalf of the State.

"Delivery Date" means the date on which a Software Deliverable is tendered to the State or the date of which the State comes into possession of it.

"Documentation" means the documentation in respect of the Software Deliverables, prepared by Kelmar for use by end users.

"Error Correction" means either a software modification or addition in Software that, when made or added to a Software Deliverable, establishes conformity of such Software Deliverable in all material respects to the Documentation, or a procedure or routine that, when included in the regular operation of a Software Deliverable, eliminates the practical adverse effect on the State of such non-conformity.

"Error" means a failure of a Software Deliverable to conform in all material respects to the Documentation. Errors are classified as follows:

> **Class A Error** – A critical failure which renders the System completely inoperable (i.e. no work around exists); highest priority demanding immediate action.
>
> **Class B Error** – A failure that does not stop operation of the System. In such instances a work around exists and the user can perform essential tasks. Class B Errors are given priority attention.
>
> **Class C Error** –A failure which is cosmetic in nature and/or results in minimal or no disruption to the System; lowest priority resolved in order received.

"Fees" means all payments required under this Agreement, including License Fees, Service and Maintenance Fees, and payments for Additional Services as set forth in the purchase orders submitted by the State to Reseller under the M0003 Software Reseller Contract in effect at the time services are performed.

"Hardware" means a computer, printer, cable, disk, disk drive, monitor, keyboard, scanner, telephone system, or other tangible goods necessary for the operation of a computer system, excluding Software Deliverables.

"Installation / Implementation Service(s)" means those services described in **Exhibit B.**

"**KAPS® System**" means the unclaimed property management system developed and hosted by Kelmar that includes the Software which offers, by example, automated holder reporting, claims processing, owner location tools, and third party database integration.

"**Maintenance and Support Service(s)**" means those services described in **Exhibit B**.

"**Module**" means, in respect of the Client Module, that part of the Software Deliverables that functions on the Client, and in respect of Server Module, that part of the Software Deliverables that functions on the Server.

"**New Work**" means all additional work or deliverables beyond the scope of the Services set forth in **Exhibit B.**

"**Normal Working Hours**" means the hours between 7:30 a.m. and 6:00 p.m. Eastern Standard Time, Monday through Friday, excluding federal and Kelmar holidays unless otherwise agreed upon between Kelmar and the State.

"**Personnel**" means a Party's principals, partners, directors and officers, employees, agents, consultants, and other such representatives.

"**Personally Identifiable Information**" means any and all information relating to an identified or identifiable natural person including specifically said individual's name, address, telephone number, social security number, account number and other unique identifiers that can be used to authenticate an individual.

"**Server**" means either or both of: (i) the file server computer or computers designated by the State that contain the main database files on which the Software Deliverables will operate; or (ii) the application server on which workstations log into and run Software from, including the Software Deliverables.

"**Services**" means all work performed by Kelmar in connection with the Agreement including Installation Services, Training Services, Maintenance and Support Services, and Additional Services.

"**State's Standards**" means routine methods and standard practices for development, processing and control of data processing systems and services performed by staff. The current State's Standards can be found at Exhibit 2 to the contract.

"**Software**" or "**Software Deliverables**" means computer programs that comprise a set of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations, that the Parties agree should be included within the scope of this Agreement as set forth in the Documentation, and all enhancements, upgrades, or other modifications thereof, but excluding commercial off-the-shelf software or other third party software that may be purchased by Kelmar as a courtesy for the account of the State.

"**Source Code**" means in connection with the Software Deliverables, the series of instructions or statements in an English-like high-level computer language such as, by way of example and not limitation, JAVA and SQL that is normally transformed by an interpreter or compiler into machine-readable Software for actual use on a computer.

"**State Data**" means all data made available by the State to Kelmar or its Personnel under the Agreement.

EXHIBIT B: STATEMENT OF WORK

1. OVERVIEW OF PROJECT DELIVERABLES.

Kelmar shall undertake the conversion to, and technical administration of, a hosted "software as a service" operating system supporting the State's abandoned property operations. The Software's functionality shall include state-of-the-art operational capacities for holder report processing, cash and securities receipts processing, owner notification and verification, claims processing, claims payment, audit business intelligence capability, website/Internet search capacity, and application security. Services shall include, but not be limited to, use of the Software (inclusive of data conversion and implementation services), public website hosting, imaging and document management services, LexisNexis integration for identification verification services, technical support and maintenance, administrator help desk services, and training for use of the Software solution and all modules associated therewith.

2. DATA CONVERSION.

Data conversion will occur over a weekend mutually agreed upon between Kelmar and the State.

Kelmar will require the State to deliver a full export of the existing UPS2000 in an agreed-on format on the Wednesday night before final conversion. The UPS2000 system will be available for inquiry only on the Thursday and Friday of the data conversion weekend.

Once the initial data conversion is complete, the State shall have the ability to export data in piecemeal or in entirety at its discretion without interference from Kelmar. This includes the ability for the State to export data to other service providers.

When developing interfaces between KAPS® and other State systems, Kelmar shall utilize the State's preferred system web service APIs (i.e. Application Program Interfaces) where applicable and possible.

Deliverables:

- Listing of all tables in the UPS2000 database, with a description and indication if the data is to be converted, archived, or abandoned
- Table column listing for all data to be converted, with mapping information to the KAPS® table and column, or indication that the data element is to be abandoned
- Record counts for all UPS2000 tables to be converted and final record counts in KAPS® tables post conversion
- Numerical totals for all dollar and share columns for all UPS2000 tables, and final numerical totals in KAPS® tables post conversion

3. IMAGING & DOCUMENT MANAGEMENT.

Kelmar shall provide licensing, support, and hardware associated with the document management system within KAPS®. Kelmar shall provide all image retrieval, storage, and backup of imaged data.

4. STATE PUBLIC WEBSITE – KELMAR MANAGED.

Kelmar shall provide and host the unclaimed portion of the State's public website. In so doing, Kelmar shall manage the following website functions:

- Search & claim of properties by the public
- Import of claims into the KAPS® System, and management of claims workflow, fast track, LexisNexis integration and emails to claimants.
- Delivery of claims created on the website to the KAPS® System.
- Public user query of Claim Status information
- Holder capture and upload of annual unclaimed property reports, and direct import of associated data into the KAPS® System.
- Static pages for unclaimed property specific content, including FAQs, Holder reporting information, departmental contact information and other key pages.

4.1. LEXISNEXIS AUTHENTICATION/ ID VERIFICATION.

As part of the claims workflow process in the KAPS® System, Kelmar will (through a seamless integration process) provide the State with a license to utilize Kelmar's KAPS® LexisNexis® Instant Verify® and LexID® identification authentication services ("KAPS® LN Services"). These enhanced services allow the verification of automated fast track, paperless claims as well as assistance in minimizing fraudulent claims. The State shall license and utilize these verification and authentication services in accordance with the subscription terms and conditions set forth in **Exhibit C,** attached hereto and incorporated herein by reference.

5. IMPLEMENTATION TRAINING & SUPPORT.

Kelmar shall provide the State with system implementation assistance in the form of on-site training, telephone support during Normal Working Hours, and issue resolution via the on-line KAPS® issue management system. This web-based issue tracking system permits clients to create service requests, report Errors, and support questions which are reviewed and resolved by Kelmar's professionals. This interactive site also allows the State to monitor its requests and track resolution progress.

Below are details of the Initial Training and Support Plan:

- Thirty-two (32) Kelmar staff hours of onsite staff training before the system implementation date
  - Training delivered in the thirty (30) days before implementation

- Eighty (80) Kelmar staff hours of onsite post-implementation support delivered in the week immediately following the implementation

- Access to Kelmar support staff in accordance with the provisions of Section 6 below.

Support and Documentation Deliverables:

- Electronic documentation that includes:
  - System functional documentation
  - System workflow documentation
- Documented support process
- Online issue tracking and management system

6. POST IMPLEMENTATION SUPPORT SERVICES.

Post Implementation, KAPS® support will include:

- Access to the Kelmar help desk during Normal Working Hours (7:30 a.m. to 6:00 p.m. Eastern Standard Time excluding federal and Kelmar holidays)
- Weekly conference calls to report on system issues and KAPS® implementation issues
- Onsite support visits of five (5) days per year for training, support, and KAPS® project assistance as mutually agreed upon by the State and Kelmar
- WebEx or similar training as needed
- Online issue tracking and management system

7. SYSTEM AVAILABILITY.

Kelmar will ensure that the KAPS® System is available between the hours of 7:30 a.m. and 6:00 p.m. Eastern Standard Time, Monday through Friday, and 8:00 a.m. through 4:00 p.m. on Saturday, Eastern Standard Time. Kelmar reserves a daily maintenance window between the hours of 9:00 p.m. and 1:00 a.m. Eastern Standard Time, Monday through Friday, and all day on Sunday. The KAPS® System shall not be available during these maintenance hours. System availability may be modified by prior arrangement, with at least five (5) working days' notice.

8. HELP DESK AND TECHNICAL SUPPORT.

Kelmar will provide a dedicated help desk and technical support team to assist authorized staff from the State with matters involving the KAPS® System during Normal Working Hours (7:30 a.m. to 6:00 p.m. Eastern Standard Time excluding federal and Kelmar holidays). The help desk can be accessed by calling 1-888-953-5627, emailing kapshelp@kelmarassoc.com or accessing Kelmar's online KAPS® issue management system. Messages received after Normal Working Hours will be returned on the following business day.

9. ERROR CORRECTION.

a. **Error Correction, generally.** Kelmar shall: (1) use commercially reasonable efforts to correct all Error(s) in the Software reported by the State in writing (hereinafter an "Error Report"); and which are confirmed by Kelmar, in the exercise of its commercially reasonable judgment; (2) use its commercially reasonable efforts to correct any Error(s) in any configurations of the Software that are created by Kelmar or any integrations of the Software with other applications, software or hardware that are configured or created by Kelmar, which are confirmed by Kelmar, in the exercise of its commercially reasonable judgment; and (3) upon the request of the STATE, provide technical support and assistance and advice related to the operation and use of the Software by the State, or any problems with any of the foregoing.

The State's Error Report must include information reasonably necessary to describe the circumstances under which the reported Error is manifest. Kelmar shall confirm the State's report of an Error and will respond to, and resolve all Errors, in accordance with the Response and Resolution Times set forth in the table below based on criticality of the Error. Response and Resolution times will be measured from the time Kelmar receives an Error Report until the respective times Kelmar has: (i) responded to, in the case of response time; and (ii) Resolved such Error Report, in the case of Resolution time. "Resolve" (including "Resolved", "Resolution" and correlative capitalized terms) means that, as to any Error, Kelmar has provided the State with the corresponding Error Correction and the State has confirmed such correction and its acceptance thereof.

Error Report Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)
Class A Error	Kelmar shall acknowledge receipt of an Error Report within one (1) business day.	Kelmar shall Resolve the Error Report as soon as practicable and no later than five (5) business days after Kelmar's receipt of the Error Report. If Kelmar Resolves the Error by way of a work-around accepted in writing by the State, the severity level assessment will be reduced to a Class B Error.

Error Report Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)
Class B Error	Kelmar shall acknowledge receipt of an Error Report or, where applicable, the STO's written acceptance of a Class A Error work-around, within two (2) business days.	Kelmar shall Resolve the Error Report as soon as practicable and no later than ten (10) business days after Kelmar's receipt of the Class B Error Report or, where applicable, the State's written acceptance of a Class A Error work-around.
Class C Error	Kelmar shall acknowledge receipt of the Error Report within five (5) business days.	Kelmar shall Resolve the Class C Error Report during the next major KAPS® release or within the time agreed between the State and Kelmar

b. **Exclusions.** Notwithstanding the foregoing, the warranty set forth in Section 6.2 of the Purchase Order attached to the Contract shall be void if the State or its agents (other than any person selected by Kelmar to act on Kelmar's behalf) modifies, adjusts or reconfigures the Software Deliverable. Further, Kelmar shall not be responsible for providing, or obligated to provide, any maintenance and support services: (a) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature to the Software by any third party (other than any person selected by Kelmar to act on Kelmar's behalf); (b) in connection with any Error if Kelmar has previously provided corrections for such Error, which correction the State chooses not to implement; and (c) if the Software has been subjected to abuse, misuse, improper handling, accident, or negligent acts of the State or its employees (collectively (a), (b) and (c) shall be referred to as "Misuse"). The State shall be responsible to pay Kelmar for services to correct Errors resulting from Misuse at Kelmar's standard rates as set forth in the purchase order submitted by the State to Reseller under the M0003 Software Reseller Contract that is in effect at the time services to correct the Error are performed.

10. SYSTEM MAINTENANCE ACTIVITIES.

Kelmar will provide System Maintenance to ensure the proper operation of all hardware, software, and network support related to the Services. System Maintenance refers to regular and routine work performed by Kelmar on the KAPS® System. This includes any work required to correct errors and/or defects in the system operation as required to meet system requirements. This also includes any routine file maintenance to update any information required for operation of the System such as data changes, constructing new edits, investigating batch job failures, investigating and correcting application defaults, repairing jobs run incorrectly, repairing problems due to system software failures, repairing problems due to operator or schedule error, rectifying problems due to web page, program, object, class, scripts, control language, or database errors, repairing security problems, repairing and restoring corrupted files, table structures, and databases, rectifying incorrect documentation, and repairing problems due to jobs run with incorrect data.

a. Kelmar will perform System Maintenance for the component parts of the System after implementation and shall ensure that the technical and professional activities required for establishing, managing and maintaining the environment are completed in a diligent manner.
b. All System Maintenance will be performed by qualified personnel who are familiar with the System.
c. Kelmar will provide backup maintenance resources.
d. Kelmar will provide for escalation of maintenance concerns to ensure critical issues are resolved. Any issues not resolved by the Client Service Representative ("CSR") will be escalated for resolution.
e. Kelmar will provide remote diagnostic capabilities.
f. Kelmar will provide one point of contact to report system malfunction whether malfunction is due to software or is of unknown origin. Kelmar will then be responsible for providing the appropriate remedy. The CSR will be the primary point of contact for system malfunctions, and will determine the appropriate path for resolution. In resolving system malfunctions and/or errors, Kelmar will follow the procedures outlined in Section 9 above.
g. Kelmar will maintain the System throughout the term of the Agreement.
h. The CSR will coordinate implementing enhancements, new releases and other changes to the KAPS® System with State staff. In so doing, advance notice shall be given by Kelmar to the State of any major upgrades or system changes. For the purpose of this Agreement a major upgrade shall include the replacement of hardware, software or firmware with a newer or better version, in order to bring the existing system up to date or to improve its characteristics.

11. ADAPTIVE AND PREVENTIVE MAINTENANCE ACTIVITIES.

a. Adaptive and preventive maintenance addresses upgrades to the KAPS® System due to technical changes to system components to keep the system maintainable, including the following services:

    i. Upgrades or patches of the application servers, operating system components, operating systems, or other system and application software. Kelmar will test and install upgrades and patches of the server operating system and the database system. Testing will occur on Kelmar's non-production systems.
    ii. Software modifications and upgrades necessary because of expiring vendor support.

iii. Kelmar will test and recommend upgrades to third party software used by the KAPS® System. Testing will occur on Kelmar's non-production systems.
iv. Hardware, database, or application conversions that do not modify user functionality.
v. Kelmar is not responsible for hardware related upgrades on State equipment but will assist with testing and identifying potential issues.

b. Kelmar will coordinate with the State in performing the above activities at a time that will provide for the least disruption for the system users.
c. Kelmar will bundle the above updates and releases on a regular schedule as mutually agreed with the State.
d. For major upgrades requiring a more significant amount of time to develop, test, and implement, Kelmar will bundle the above updates and releases on a quarterly or other major release cycle.
e. With the State's consent, Kelmar will release patches and fixes on an 'as requested' release schedule.

12. PERFORMANCE OF MAINTENANCE ACTIVITIES.

Kelmar will assist the State's staff in undertaking maintenance activities to improve the performance of the Software. Kelmar will provide database monitoring upon request to help identify any potential performance problems.

Activities that typically can be completed independent of a production release (e.g., data changes, data purges) may be completed on a more frequent basis (e.g., daily or weekly).

13. DOCUMENTATION UPDATES.

Kelmar will provide Documentation with each new release or change to the KAPS® System. Such documentation will be made available electronically. Any customized or unique changes made to the Software expressly for the State will be documented and provided to the State.

14. KELMAR SYSTEM TESTING.

Kelmar will be responsible for System Testing each Software Deliverable in Kelmar's development environment prior to turning over the Software Deliverable to the State for User Acceptance Testing ("UAT") and approval. Kelmar's System Testing shall include the following, at a minimum:

a. Unit Testing and incremental Integration Testing of the components of each Software Deliverable;

b. Integration Testing of each Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Software Deliverable. Such testing will include Regression Testing, volume and stress testing to ensure that the Software Deliverables meet the State's projected growth in the number and size of transactions to be processed by the Application and the number of users; and

c. Business Function Testing and Technical Testing of each Application in a simulated production environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Kelmar.

Within five (5) Business Days following the completion of System Testing pursuant to this Section 14, Kelmar shall provide the State, upon its request, with a testing matrix evidencing the conduct and successful completion of all testing associated with each condition identified in the System Testing plans. To the extent that testing occurs on State premises, the State may, in its sole discretion, observe or otherwise participate in the testing performed under this Section.

15. APPROVAL OF DELIVERABLES, IN GENERAL.

The State shall approve in writing a Deliverable upon confirming that it conforms to and, in the case of a Software Deliverable, performs in accordance with, the State's documented specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable that contains material deficiencies if the State elects to permit Kelmar to rectify them post-approval. In any case, Kelmar will be responsible for working diligently to correct within a reasonable time at Kelmar's expense all deficiencies in the Deliverable that remain outstanding at the time of State approval.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in, or problems with, a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Kelmar for correction and re-delivery prior to resuming the review or UAT process. In such an event, Kelmar will correct the deficiencies in the Deliverable in accordance with the Agreement.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted.

16. PROCESS FOR APPROVAL OF SOFTWARE DELIVERABLES.

The State will conduct UAT of each Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies. A separate

UAT environment with sample of production data shall be required for User Acceptance Testing and approval.

The State Review Period shall be the number of days agreed in writing by the Parties (failing which it shall be fourteen (14) days by default). The State Review Period for each Software Deliverable will begin when Kelmar has delivered the Software Deliverable to the State and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

If the State determines during the UAT that the Software Deliverable contains any deficiencies, the State will notify Kelmar of the deficiency by making an entry in an incident reporting system available to both Kelmar and the State.

Kelmar will use reasonable commercial efforts to correct all reported deficiencies with the Software Deliverable, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies, and re-deliver the corrected version to the State for re-testing in UAT. Kelmar will coordinate the re-delivery of corrected versions of Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Kelmar.

Within three (3) business days after the end of the State Review Period, the State will give Kelmar a written notice indicating the State's approval or rejection of the Software Deliverable according to the criteria and process set out in this Section. If the State has given notice of non-acceptance, Kelmar will again act to diligently correct, modify, or improve such Software Deliverable to address the cause of non-acceptance. This process will be repeated as may be necessary until the Software Deliverables are accepted or deemed accepted by the State as provided in Section 16 below.

Kelmar will maintain an archive of previous software versions to reinstall in the event a major deficiency is identified after implementation.

17. ACCEPTANCE.

"Acceptance" shall occur when the Software Deliverable has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Software Deliverable into live production for its own reasons unrelated to concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Acceptance of the Project.

18. SUBSEQUENT SYSTEMS CHANGES.

In the event the State desires to modify its systems to accommodate a Software Deliverable or other Change, Kelmar shall perform such modification upon receipt of written approval of the same by the State's designated Project Manager. No systems modifications shall be made by Kelmar without the prior written consent of the State. Further, any changes made by Kelmar to the State's systems shall be done according to applicable State procedures, including security, access and configuration management procedures.

19. SYSTEM SECURITY / LOGS & OTHER DOCUMENTATION.

At all times Kelmar shall secure and maintain the KAPS® System with security measures that meet and/or exceed the ISO/IEC 27002:2013 information security controls standard. Such measures shall include, but not be limited to, computer and network encryption protocols developed and endorsed by the United States Department of Defense, full disk encryption, complex password protection for all electronic devices and user accounts and files, state of the art antivirus and antispyware software, patch management, the latest intrusion prevention and detection software programs, extensive firewalls and access systems, and around the clock daily monitoring of all systems.

Kelmar shall disclose its non-proprietary security processes and technical limitation to the State to ensure adequate protection and flexibility can be attained between the Parties. Upon request, and agreement to keep the reports confidential and exempt from public disclosure, Kelmar shall annually provide the State with a copy of the independent audit report (e.g. SOC 2 Type 2 Compliance Report) for the KAPS® System as well as the independent audit report (e.g. SOC 2 / SSAE-18 Compliance Reports) for Kelmar's data center housing the KAPS® System and all related Servers. Likewise, upon request, Kelmar shall provide the State with records demonstrating Kelmar's internal security testing including system scans, penetration tests and other similar reports. Additionally, Kelmar shall permit the State to access the KAPS® System security logs for the State's dedicated Server and, upon request, shall provide the State with copies of latency statistics, user access reports, and other records of a similar manner relating to the State's use of the KAPS® System.

EXHIBIT C

SUBSCRIPTION TERMS & CONDITIONS – KAPS® LEXISNEXIS® MODULE

For the purposes of the KAPS® Master Software License, Maintenance and Support Agreement ("Agreement") to which this **Exhibit C** is attached and incorporated, the following subscription terms and conditions shall apply to all data received by the State in connection with its license to utilize Kelmar's LexisNexis® Instant Verify® and LexID® verification and authentication services. The subscription terms and conditions contained herein shall supersede and govern in the event of a conflict between the terms of the Agreement and any new, other, or different terms in any other writing.

1. **RESTRICTED LICENSE.** Kelmar hereby grants to the State a restricted license to use the LexisNexis® Instant Verify® and LexID® Identification Services (collectively hereinafter the "KAPS® LN Services") and any data contained therein, subject to the restrictions and limitations set forth below:

(i) **Generally.** Kelmar hereby grants to the State a restricted license to use the KAPS® LN Services solely for the State's own internal government purposes. The State represents and warrants that all of the State's use of the KAPS® LN Services shall be for only legitimate government purposes, including those specified by the State in connection with a specific information request, relating to the administration of the State's unclaimed property program and as otherwise governed by the Agreement. The State shall not use the KAPS® LN Services for marketing purposes or to resell or broker the KAPS® LN Services to any third party and shall not use the KAPS® LN Services for personal (non-government) purposes. The State shall not use the KAPS® LN Services to provide data processing services to third-parties or evaluate the data of or for third-parties. The State agrees that if Kelmar determines or reasonably suspects that continued provision of KAPS® LN Services to the State entails a potential security risk, or that the State is engaging in marketing activities, reselling, brokering or processing or evaluating the data of or for third-parties, or using the KAPS® LN Services for personal (non-government) purposes or using the KAPS® LN Services' information, programs, computer applications, or data, or is otherwise violating any provision of this Agreement, or any of the laws, regulations, or rules described herein, Kelmar may take immediate action, including, without limitation, terminating the delivery of, and the license to use, the KAPS® LN Services. The State shall not access the KAPS® LN Services from Internet Protocol addresses located outside of the United States and its territories without Kelmar's prior written approval. The State shall comply with all laws, regulations and rules which govern the use of the KAPS® LN Services and information provided therein. Kelmar may at any time mask or cease to provide the State access to any KAPS® LN Services or portions thereof which Kelmar may deem, in Kelmar's sole discretion, to be sensitive or restricted information.

(ii) **GLBA Data.** Some of the information contained in the KAPS® LN Services is "nonpublic personal information," as defined in the Gramm-Leach-Bliley Act (15 U.S.C. § 6801, et seq.) and related state laws, (collectively, the "GLBA"), and is regulated by the GLBA ("GLBA Data"). The State shall not obtain and/or use GLBA Data through the KAPS® LN Services, in any manner that would violate the GLBA, or any similar state or local laws, regulations and rules. The State acknowledges and agrees that it may be required to certify its permissible use of GLBA Data falling within an exception set forth in the GLBA at the time it requests information in connection with certain KAPS® LN Services and will recertify upon request by Kelmar. The State certifies with respect to GLBA Data received through the KAPS® LN Services that it complies with the Interagency Standards for Safeguarding Information issued pursuant to the GLBA.

(iii) **DPPA Data.** Some of the information contained in the KAPS® LN Services is "personal information," as defined in the Drivers Privacy Protection Act (18 U.S.C. § 2721, et seq.) and related state laws, (collectively, the "DPPA"), and is regulated by the DPPA ("DPPA Data"). The State shall not obtain and/or use DPPA Data through the KAPS® LN Services in any manner that would violate the DPPA. The State acknowledges and agrees that it may be required to certify its permissible use of DPPA Data at the time it requests information in connection with certain KAPS® LN Services and will recertify upon request by Kelmar.

(iv) **Social Security and Driver's License Numbers.** Kelmar may in its sole discretion permit the State to access QA Data (as defined as Social Security or Driver's License numbers). If the State is authorized by Kelmar to receive QA Data, and the State obtains QA Data through the KAPS® LN Services, the State certifies it will not use the QA Data for any purpose other than as expressly authorized by Kelmar's policies, the terms and conditions herein, and applicable laws and regulations. In addition to the restrictions on distribution otherwise set forth in Paragraph 2 below, the State agrees that it will not permit QA Data obtained through the KAPS® LN Services to be used by an employee or contractor that is not an Authorized User with an Authorized Use. The State agrees it will certify, in writing, its uses for QA Data and recertify upon request by Kelmar. The State may not, to the extent permitted by the terms of this Agreement, transfer QA Data via email or ftp without Kelmar's prior written consent. However, the State shall be permitted to transfer such information so long as: (a) a secured method (for example, sftp) is used, (b) transfer is not to any third party, and (c) such transfer is limited to such use as permitted under this Agreement. Kelmar may at any time and for any or no reason cease to provide or limit the provision of QA Data to the State.

(v) **Copyrighted and Trademarked Materials.** The State shall not remove or obscure any trademarks, copyright notices or other notices contained on materials accessed through the KAPS® LN Services.

(vi) **National Change of Address Database.** Kelmar is a licensee of the United States Postal Service's NCOALINK database ("NCOA Database"). The information contained in the NCOA Database is regulated by the Privacy Act of 1974 and may be used only to provide a mailing list correction service for lists that will be used for preparation of mailings. If the State receives all or a portion of the NCOA Database through the KAPS® LN Services, the State hereby certifies to Kelmar that it will not use such information for any other purpose.

(vii) **Additional Terms.** Certain materials contained within the KAPS® LN Services are subject to additional obligations and restrictions. Without limitation, these services include news, business information (e.g., Dun & Bradstreet reports), and federal legislative and regulatory materials. To the extent that the State receives such materials through the KAPS® LN Services, the State agrees to comply with the Supplemental Terms and Conditions for Use of KAPS® LN Services contained at the following website: www.lexisnexis.com/terms/supplemental.aspx (the "Supplemental Terms"). The Supplemental Terms are hereby incorporated into this Agreement by reference.

(viii) **Fair Credit Reporting Act.** The KAPS® LN Services provided pursuant to this Agreement are not provided by "consumer reporting agencies," as that term is defined in the Fair Credit Reporting Act, (15 U.S.C. §1681, et seq.), (the "FCRA"), and do not constitute "consumer reports" as that term is defined in the FCRA. Accordingly, the KAPS® LN Services may not be used in whole or in part as a factor in determining eligibility for credit, insurance, employment or another purpose in connection with which a consumer report may be used under the FCRA. Further, (a) the State certifies that it will not use any of the information it receives through the KAPS® LN Services to determine, in whole or in part an individual's eligibility for any of the following products, services or transactions: (1) credit or insurance to be used primarily for personal, family or household purposes; (2) employment purposes; (3) a license or other benefit granted by a government agency; or (4) any other product, service or transaction in connection with which a consumer report may be used under the FCRA or any similar state statute, including without limitation apartment rental, check-cashing, or the opening of a deposit or transaction account; (b) by way of clarification, without limiting the foregoing, the State may use, except as otherwise prohibited or limited by this Agreement, information received through the KAPS® LN Services for the following purposes: (1) to verify or authenticate an individual's identity; (2) to prevent or detect fraud or other unlawful activity; (3) to locate an individual; (4) to review the status of a legal proceeding; (5) to collect a debt, provided that such debt collection does not constitute in whole or in part, a determination of an individual consumer's eligibility for credit or insurance to be used primarily for personal, family or household purposes; or (6) to determine whether to buy or sell consumer debt or a portfolio of consumer debt in a commercial secondary market transaction, provided that such determination does not constitute in whole or in part, a determination of an individual consumer's eligibility for credit or insurance to be used primarily for personal, family or household purposes; (c) specifically, if the State is using the KAPS® LN Services in connection with collection of a consumer debt on its own behalf, or on behalf of a third party, the State shall not use the KAPS® LN Services: (1) to revoke consumer credit; (2) to accelerate, set or change repayment terms; or (3) for the purpose of determining a consumer's eligibility for any repayment plan; provided, however, that the State may, consistent with the certification and limitations set forth in this Subparagraph (viii), use the KAPS® LN Services for identifying, locating, or contacting a consumer in connection with the collection of a consumer's debt or for prioritizing collection activities; and (d) the State shall not use any of the information it receives through the KAPS® LN Services to take any "adverse action," as that term is defined in the FCRA.

(ix) **MVR Data.** If the State is permitted to access Motor Vehicle Records ("MVR Data") from Kelmar, without in any way limiting the State's obligations to comply with all state and federal laws governing use of MVR Data, the following specific restrictions apply and are subject to change:

(a) The State shall not use any MVR Data provided by Kelmar, or portions of information contained therein, to create or update a file that the State uses to develop its own source of driving history information.

(b) As requested by Kelmar, the State shall complete any state forms that Kelmar is legally or contractually bound to obtain from the State before providing the State with MVR Data.

(c) Kelmar (and certain third party vendors) may conduct reasonable and periodic audits of the State's use of MVR Data. Further, in response to any audit, the State must be able to substantiate the reason for each MVR Data order.

(ix) **HIPAA.** The State represents and warrants that the State will not provide Kelmar with any Protected Health Information (as that term is defined in 45 C.F.R. Sec. 160.103) or with Electronic Health Records or Patient Health Records (as those terms are defined in 42 U.S.C. Sec. 17921(5), and 42 U.S.C. Sec. 17921(11), respectively) or with information from such records without the execution of a separate agreement between the Parties.

(x) **Retention of Records.** For uses of GLB Data, DPPA Data and MVR Data, as described in Paragraphs 1(ii), 1(iii) and 1(ix), the State shall maintain for a period of five (5) years a complete and accurate record (including consumer identity, purpose and, if applicable, consumer authorization) pertaining to every access to such data.

2. **SECURITY.** The State acknowledges that the information available through the KAPS® LN Services may include personally identifiable information and it is the State's obligation to keep all such accessed information confidential and secure. Accordingly, the State shall: (a) restrict access to KAPS® LN Services to those employees who have a need to know as part of their official duties; (b) ensure that none of its employees shall (i) obtain and/or use any information from the KAPS® LN Services for personal reasons, or (ii) transfer any information received through the KAPS® LN Services to any party except as permitted hereunder; (c) keep all user identification numbers, and related passwords, or other security measures (collectively, "User IDs") confidential and prohibit the sharing of User IDs; (d) immediately deactivate the User ID of any employee who no longer has a need to know, or for terminated employees on or prior to the date of termination; (e) in addition to any obligations under Paragraph 1, take all commercially reasonable measures to prevent unauthorized access to, or use of, the KAPS® LN Services or data received therefrom, whether the same is in electronic form or hard copy, by any person or entity; (f) maintain and enforce data destruction procedures to protect the security and confidentiality of all information obtained through KAPS® LN Services as it is being disposed; (g) unless otherwise required by law, purge all information received through the KAPS® LN Services and stored electronically or on hard copy by the State within ninety (90) days of initial receipt; (h) be capable of receiving the KAPS® LN Services where the same are provided utilizing "secure socket layer," or such other means of secure transmission as is deemed reasonable by Kelmar; (i) not access and/or use the KAPS® LN Services via mechanical, programmatic, robotic, scripted or other automated search means, other than through batch or machine-to-machine applications approved by Kelmar; and (j)

take all steps to protect their networks and computer environments, or those used to access the KAPS® LN Services, from compromise. The State agrees that on at least a quarterly basis it will review searches performed by its User IDs to ensure that such searches were performed for a legitimate business purpose and in compliance with all terms and conditions herein. The State will implement policies and procedures to prevent unauthorized use of User IDs and the KAPS® LN Services and will immediately notify Kelmar, in writing to Kelmar if the State suspects, has reason to believe or confirms that a User ID or the KAPS® LN Services (or data derived directly or indirectly therefrom) is or has been lost, stolen, compromised, misused or used, accessed or acquired in an unauthorized manner or by any unauthorized person, or for any purpose other than legitimate business reasons. The State shall remain solely liable for all costs associated therewith and shall, if permitted by law further reimburse Kelmar for any expenses it incurs due to the State's failure to prevent such impermissible use or access of User IDs and/or the KAPS® LN Services, or any actions required as a result thereof. Furthermore, in the event that the KAPS® LN Services provided to the State include personally identifiable information (including, but not limited to, social security numbers, driver's license numbers or dates of birth), and to the extent such personally identifiable information is stored or otherwise maintained by the State or its employees outside of the KAPS® System, the following shall apply: The State acknowledges that, upon unauthorized acquisition or access of or to such personally identifiable information, including but not limited to that which is due to use by an unauthorized person or due to unauthorized use (a "Security Event"), the State shall, in compliance with law, notify the individuals whose information was potentially accessed or acquired that a Security Event has occurred, and shall also notify any other parties (including but not limited to regulatory entities and credit reporting agencies) as may be required by applicable law. The State agrees that such notification shall not reference Kelmar or the product through which the data was provided, nor shall Kelmar be otherwise identified or referenced in connection with the Security Event, without Kelmar's express written consent unless required by law or law enforcement directive. The State shall be solely responsible for any other legal or regulatory obligations which may arise under applicable law in connection with such a Security Event and shall bear all costs associated with complying with legal and regulatory obligations in connection therewith. The State shall remain solely liable for claims that may arise from a Security Event, including, but not limited to, costs for litigation (including attorneys' fees), and reimbursement sought by individuals, including but not limited to, costs for credit monitoring or allegations of loss in connection with the Security Event. In the event of a Security Event, Kelmar may, in its sole discretion, take immediate action, including suspension or termination of the State's account, without further obligation or liability of any kind.

3. **PERFORMANCE.** Kelmar will use commercially reasonable efforts to deliver the KAPS® LN Services requested by the State and to compile information gathered from selected public records and other sources used in the provision of the KAPS® LN Services; provided, however, that the State accepts all information "**AS IS.**" The State acknowledges and agrees that Kelmar obtains its data from third party sources, which may or may not be completely thorough and accurate, and that the State shall not rely on Kelmar for the accuracy or completeness of information supplied through the KAPS® LN Services. Without limiting the foregoing, the criminal record data that may be provided as part of the KAPS® LN Services may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected. The State understands that the State may be

restricted from accessing certain KAPS® LN Services which may be otherwise available. Kelmar reserves the right to add materials and features to, and to discontinue offering any of the materials and features that are currently a part of, the KAPS® LN Services. In the event that Kelmar discontinues a material portion of the materials and features that the State regularly uses in the ordinary course of its business, and such materials and features are part of a flat fee subscription plan to which the State has subscribed, Kelmar will, at the State's option, issue a prorated credit to the State's account.

4. **INTELLECTUAL PROPERTY; CONFIDENTIALITY.** The State agrees that the State shall not reproduce, retransmit, republish, or otherwise transfer for any commercial purposes the KAPS® LN Services' information, programs or computer applications. The State shall use such materials in a manner consistent with Kelmar's interests and the terms and conditions herein, and shall notify Kelmar of any threatened or actual infringement of Kelmar's rights. Notwithstanding anything in this Agreement to the contrary, Kelmar or Kelmar's data provider shall own the State's search inquiry data used to access the KAPS® LN Services (in the past or future) and may use such data for any purpose consistent with applicable federal, state and local laws, rules and regulations. The State and Kelmar acknowledge that they each may have access to confidential information of the disclosing party ("Disclosing Party") relating to the Disclosing Party's business including, without limitation, technical, financial, strategies and related information, computer programs, algorithms, know-how, processes, ideas, inventions (whether patentable or not), schematics, Trade Secrets (as defined below) and other information (whether written or oral), and in the case of Kelmar's information, product information, pricing information, product development plans, forecasts, data contained in KAPS® LN Services, and other business information ("Confidential Information"). "Trade Secret" shall be deemed to include any information which gives the Disclosing Party an advantage over competitors who do not have access to such information as well as all information that fits the definition of "trade secret" set forth in the New Jersey Trade Secrets Act §§1-9 - C.56:15-1 *et. seq.*. Each receiving party ("Receiving Party") agrees not to divulge any Confidential Information or information derived therefrom to any third party and shall protect the confidentiality of the Confidential Information with the same degree of care it uses to protect the confidentiality of its own confidential information and trade secrets, but in no event less than a reasonable degree of care. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information solely to the extent required by subpoena, court order or other governmental authority, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such subpoena, court order or other governmental authority so as to allow the Disclosing Party to have an opportunity to obtain a protective order to prohibit or restrict such disclosure at its sole cost and expense. Confidential Information disclosed pursuant to subpoena, court order or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information. Each Party's obligations with respect to Confidential Information shall continue for the term of this Agreement and for a period of five (5) years thereafter, provided however, that with respect Trade Secrets, each party's obligations shall continue for so long as such Confidential Information continues to constitute a Trade Secret.

5. **WARRANTIES/LIMITATION OF LIABILITY.** Kelmar does not make and hereby disclaims any warranty, express or implied with respect to the KAPS® LN Services. Kelmar does

not guarantee or warrant the correctness, completeness, merchantability, or fitness for a particular purpose of the KAPS® LN Services or information provided therein. In no event shall Kelmar be liable for any indirect, incidental, or consequential damages, however arising, incurred by the State from receipt or use of information delivered using the KAPS® LN Services or the unavailability thereof. Due to the nature of public record information, the public records and commercially available data sources used in KAPS® LN Services may contain errors. Source data is sometimes reported or entered inaccurately, processed poorly or incorrectly, and is generally not free from defect. KAPS® LN Services are not the source of data, nor are they a comprehensive compilation of the data. Before relying on any data, it should be independently verified.

6. **INDEMNIFICATION.** Reserved

7. **AUDIT.** The State understands and agrees that, in order to ensure compliance with the FCRA, GLBA, DPPA, other applicable state or federal laws, regulations or rules, regulatory agency requirements, this Agreement, and Kelmar's obligations under its contracts with its data providers and Kelmar's policies, Kelmar may conduct periodic reviews of the State's use of the KAPS® LN Services and may, upon reasonable notice, audit the State's records, processes and procedures related to the State's use, storage and disposal of KAPS® LN Services and information received therefrom. The State agrees to cooperate fully with any and all audits and to respond to any such audit inquiry within ten (10) business days, unless an expedited response is required. Violations discovered in any review and/or audit by Kelmar will be subject to immediate action including, but not limited to, suspension or termination of the license to use the KAPS® LN Services, reactivation fees, legal action, and/or referral to federal or state regulatory agencies.

8. **EMPLOYEE TRAINING.** As part of the Implementation Services provided to the State by Kelmar, Kelmar shall conduct an initial training on the State's obligations under this Agreement, including, but not limited to, the licensing requirements and restrictions under Paragraph 1 and the security requirements of Paragraph 2, and make available the training materials for the State's continued use. Thereafter, the State shall train new employees prior to allowing access to KAPS® LN Services on the State's obligations under this Agreement, including, but not limited to, the licensing requirements and restrictions under Paragraph 1 and the security requirements of Paragraph 2. The State shall conduct a similar review of its obligations under this Agreement with existing employees who have access to KAPS® LN Services no less than annually. The State shall keep records of such training.

9. **CHANGE IN AGREEMENT.** By receipt of the KAPS® LN Services, the State agrees to, and shall comply with, changes to the Restricted License granted the State in Paragraph 1 herein, changes in pricing, and changes to other provisions of this Agreement as Kelmar shall make from time to time by written notice to the State. Kelmar may, at any time, impose restrictions and/or prohibitions on the State's use of the KAPS® LN Services or certain data. The State understands that such restrictions or changes in access may be the result of a modification in Kelmar policy, a modification of third party agreements, a modification in industry standards, a Security Event or a change in law or regulation, or the interpretation thereof. Upon written notification by Kelmar of such restrictions, the State agrees to comply with such restrictions.

10. **CLIENT CHANGES.** The State shall notify Kelmar immediately of any changes to the information on its Application for the KAPS® LN Services including, without limitation, changes in contact information, address, designated administrators, etc. If at any time the State no longer meets the required criteria for accessing the KAPS LN® Services, Kelmar expressly reserves its right to terminate such access.

11. **PUBLICITY.** Neither party will name the other or refer to the other (including use of the KAPS® LN Services) in any press releases, advertisements, promotional or marketing materials, or make any other third party disclosures.

12. **PRIVACY PRINCIPLES.** With respect to personally identifiable information regarding consumers, the Parties further agree as follows: Kelmar has adopted the "Kelmar Data Privacy Principles" ("Principles"), which may be modified from time to time, recognizing the importance of appropriate privacy protections for consumer data, and the State agrees that the State (including its directors, officers, employees or agents) will comply with the Principles or the State's own comparable privacy principles, policies, or practices. The Principles are available at: http://www.lexisnexis.com/privacy/data-privacy-principles.aspx.

13. **SURVIVAL OF TERMS.** Provisions hereof related to the release of claims; disclaimer of warranties; confidentiality; record retention; security; the use and protection of information and the KAPS® LN data; payment for the KAPS® LN Services; audit; and LexisNexis's use and ownership of all search inquiry data shall survive any termination of the Agreement and/or the license to use the KAPS® LN Services.

14. **ENTIRE AGREEMENT.** Except as otherwise provided herein, this Exhibit C constitutes the final written agreement and understanding of the Parties concerning the KAPS® LN Services and is intended as a complete and exclusive statement of the terms of the agreement with respect to the licensing of the KAPS® LN Services, which shall supersede all other representations, agreements, and understandings, whether oral or written, which relate to the use of the KAPS® LN Services. Any new, other, or different terms supplied by the State beyond the terms contained herein, including those contained in purchase orders or confirmations issued by the State, are specifically and expressly rejected by Kelmar unless Kelmar agrees to them in a signed writing specifically including those new, other, or different terms.