



Master Software Subscription Agreement

This Master Software Subscription Agreement is effective as of [REDACTED], 201[REDACTED] (the “Effective Date”), between Clockwork Solutions, LLC, a Texas limited liability company (“Clockwork”), and [REDACTED], the GSA Client (“Client”).

In consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions**. Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

1.

1.2 “Agreement” means this Agreement, and any Schedules, exhibits and amendments to the foregoing. Each Schedule with the terms of this Agreement, and any exhibits and amendments to such Schedule, is a separate and independent contractual obligation of Clockwork from any other Schedule.

[1.3 “Asset Cost” means the cost of the components or parts maintained in the Client’s inventory (whether owned by Client or a third party, and whether such inventory is maintained for Client’s own business or the business of a third party) which is tracked, recorded, maintained or managed using the Software. The Asset Cost shall be determined using the Software.

1.4 “Asset Inventory” means the number of components or parts maintained in the Client’s inventory (whether owned by Client or a third party, and whether such inventory is maintained for Client’s own business or the business of a third party) which is tracked, recorded, maintained or managed using the Software.]

1.5 “Client” means the entity entering into this Agreement and identified in the preamble as “Client” and designated in this Agreement or a Schedule to this Agreement authorized to make Production Use of the Software.

1.6 “Contract Year” means the twelve (12) month period following a Schedule Effective Date, and every twelve (12) month period thereafter commencing on the anniversary of the applicable Schedule Effective Date. The last Contract Year may be less than a twelve (12) month period depending on the term of the applicable Schedule.

1.7 “Custom Software” means any interfaces specific to Client’s implementation of the Software or changes or modifications to the Software made by Client or on Client’s behalf, regardless of whether Clockwork authorized them.

1.8 “Deliverable” means any Work Product required to be delivered to Client pursuant to a Purchase Order under the Professional Services Terms.

1.9 “Documentation” means the user manuals and technical manuals relating to the Software that are provided to Client by Clockwork pursuant to this Agreement.

1.10 “Hosting Services” means the services to be undertaken by Clockwork, and its third party provider(s), to enable Client using the Internet to access and use the Software hosted on the System.

1.11 “M&S Services” means the maintenance and support services provided by Clockwork to Client with respect to Software, which maintenance and support services will be provided in accordance with Section 3.1 and the M&S Services Terms.

1.12 “M&S Services Terms” means the terms and conditions for the provision of M&S Services, attached hereto as Exhibit A.

1.13 “Production Use” means to activate the processing capabilities of the Software, and to load, execute, access and employ the Software, or display information resulting from such capabilities solely for Client’s internal business purposes.

1.14 “Professional Services” means implementation, consulting and training services, including without limitation, technical services to facilitate setup and deployment of the Software.

1.15 “Professional Services Terms” means the terms and conditions for the performance of Professional Services, attached hereto as Exhibit B.

1.16 “Schedule(s)” means the schedule(s), and any amendments thereto, executed by the parties and which references this Agreement.

1.17 “Services” means the services provided by Clockwork or its contractors to Client under this Agreement, including without limitation, M&S Services, Professional Services and Hosting Services to the extent applicable.

1.18 “Software” means (a) the object-code version(s) of Clockwork’s proprietary software programs identified in a Schedule and delivered to Client pursuant to this Agreement; (b) Updates; and (c) any complete or partial copies of the foregoing. Software does not include Custom Software. All Software is delivered to Client only if and when generally commercially available.

1.19 “Subscription Fees” means the annual subscription fees, (which are established in the underlying GSA Schedule Contract) for the Software license described in Section 2, M&S Services and Hosting Services.

1.20 “System” means the operating systems, application software (excluding the Software and Custom Software), architecture, communications networks, firewalls, load balances, servers, switches, hubs, routers and other hardware maintained by or on behalf of Clockwork to host the Software and that enable Client’s access and use of the Software as described in this Agreement. The System may be modified, enhanced or replaced by Clockwork or its third party provider(s).

1.21 “Update” means any Fixes (as such term is defined in the M&S Services Terms), error corrections, enhancements and subsequent releases to the Software and associated Documentation which are made commercially available by Clockwork as part of the M&S Services. Updates shall not include any releases, enhancements, functionality, modules, programs or Software that Clockwork licenses separately or charges for separate from M&S Services.

1.22 “Work Product” means any software, data, documentation, graphics, text, code, inventions, pictures, audio, video, animations, enhancements, improvements, methods, processes, works of authorship, work-flow methods or other material or any portions of the foregoing that Clockwork creates, whether alone or jointly, while performing the Services. Work Product excludes: (a) the Software; (b) Updates; (c) Clockwork’s intellectual property and other proprietary rights; (d) any generic routines or code that have general application to software or services offered by Clockwork; (e) Clockwork’s Confidential Information; and (f) all modifications, alterations, derivative works and enhancements to the foregoing, and all copies thereof.

2. License.

2.1 License Grant. Subject to the terms and conditions of this Agreement and the timely payment to Clockwork of the Subscription Fees, Clockwork hereby grants Client during the term of the applicable Schedule a limited, non-exclusive, non-sublicensable and non-transferable license to access and use the Software and Documentation via the Internet solely for Production Use for up to the Asset Cost or the Asset Inventory specified in the applicable Schedule. Client acknowledges and agrees that it will not receive possession of the Software or the Documentation, but rather will access the Software and Documentation via the Internet, as hosted by or on behalf of Clockwork. **[Clockwork will provide Customer access to the Software and Documentation by issuance of a confidential site (I.P.) address and passwords to Client’s authorized users. Client is responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address or passwords.]** The rights granted to Client pursuant to any Schedule shall terminate upon the termination or expiration of this Agreement or the applicable Schedule for any reason.

2.2 Restrictions. Client acknowledges that the license grants set forth in this Section 2 do not include any right or license with respect to the source code form of the Software. All rights in the Software, Documentation

and Services not expressly granted to Client in this Agreement are hereby reserved to Clockwork and its licensors. Without limiting the foregoing, Client agrees that it will not: (a) access or use any portion of the Software or Documentation not expressly licensed and paid for by Client; (b) cause or permit de-compilation or reverse engineering or disassembly of all or any portion of the Software or create derivative works based on the Software or Documentation, or any portions thereof; (c) use the Software or Documentation in violation of U.S. Federal laws or regulations, including the U.S. Department of Commerce export administration regulations; (d) use, or authorize or permit any third party to use or access, the Software or Documentation, except as expressly permitted herein; (e) translate, modify or transmit the Software or Documentation, except as expressly permitted herein; (f) reproduce or copy the Software or Documentation, or any portion thereof, except as expressly permitted herein, or delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Software or Documentation; or (g) directly or indirectly market, sell, sublicense, relicense, distribute, disclose, transfer, use, rent or lease the Software or Documentation, or any portion thereof, for third party use, third party training, facilities management or time-sharing, use as an application service provider, or for service bureau use.

3. Services.

3.1 M&S Services. Subject to the terms and conditions of this Agreement and the timely payment to Clockwork of the Subscription Fees through execution of GSA Purchase Order(s), Clockwork shall provide Client with the M&S Services described in the M&S Services Terms. Client will be responsible for providing Level 1 Support and Level 2 Support (as defined in the M&S Services Terms) to its end users in connection with their access and use of the Software. Clockwork shall provide Level 3 Support (as defined in the M&S Services Terms).

3.2 System Availability. Subject to the terms and conditions of this Agreement and the timely payment to Clockwork of the Subscription Fees pursuant to the underlying GSA Schedule Contract and any applicable GSA Purchase Order, Clockwork shall provide the Hosting Services and use commercially reasonable efforts to ensure that the System is available for Client's access at least ninety five percent (95.0%) of the time, as measured on a monthly basis. System availability shall be measured according to the following formula: (a) the sum of (i) number of minutes in the month less (ii) the total number of minutes of System unavailability in the month, (b) divided by the number of minutes in the month. System unavailability commences at the time Client or Clockwork open a trouble ticket (whichever is first) regarding Client's inability to access the System and ending on Client's or Clockwork's confirmation that access to the System has been restored. The System availability percentage specifically excludes (i.e., it shall not be taken into consideration in measuring System unavailability): (1) scheduled System maintenance, (2) inability to access the System resulting from failure in the Internet backbone, the Client extranet, or networks not directly managed by Clockwork or its third party provider(s); (3) emergency maintenance; and (4) events of force majeure. Clockwork reserves the right to perform System maintenance as needed and, except in the event of emergency maintenance, will schedule such maintenance before or after 9 a.m. to 5 p.m. U.S. Central Time. Client acknowledges and agrees that the Hosting Services and System, or various aspects thereof, may be provided or maintained by third party service providers selected by Clockwork, at its sole discretion.

3.3 Professional Services. If requested and as available, Clockwork will provide Client with Professional Services pursuant to pursuant to the underlying GSA Schedule Contract and applicable GSA Purchase Order(s) and in accordance with the Professional Services Terms.

4. Prices, Ordering, Payment.

4.1

4.2 Invoicing. Client shall pay to Clockwork all fees, charges and expenses due and owing pursuant to the terms of the underlying GSA Schedule Contract, Schedule Price List, and executed GSA Purchase Order; and all payment obligations are non-cancellable, non-refundable and non-contingent. Client may not set-off any amounts owing to Client against any payments owing to Clockwork hereunder. The Subscription Fees shall be paid through execution of a GSA Purchase Order in accordance with the terms of the underlying GSA Schedule Contract. 4.3

Taxes and Duties. Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Clockworks shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to contractor

or provide it evidence necessary to sustain an exemption, in accordance with Federal Acquisition Regulation (FAR) 52.229-1 and FAR 52.229-3.4.4 Ordering Procedure. If Client's internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Clockwork, it will timely issue such purchase order and inform Clockwork of the number and amount thereof. 4.5

4.6 Audits. During the term of this Agreement and for a period of two (2) years thereafter, upon five (5) days prior written notice to Client, Clockwork may audit Client's use of the Software and Services and Client's compliance with the terms and conditions of this Agreement. Such audits shall occur during regular business hours and shall be conducted in a manner designed to limit disruption to Client's business. If the Clockwork's audit reveals any use in excess of the software licenses granted to the GSA Customer, the contractor will provide immediate notice to the GSA Customer of the alleged deficiency and provide the GSA Customer the opportunity to issue a Purchase Order for the number of licenses required to bring the GSA Customer into compliance under this Agreement.

5. Warranties.

5.1 Software. Provided that Client notifies Clockwork of the non-conformance within the warranty period, Clockwork warrants that the Software, as delivered to Client, will perform substantially in accordance with its Documentation for a period of ninety (90) days from the first delivery date of the Software, except to the extent any breach of the foregoing warranty is caused by: (a) Client's failure to be a compliant subscriber to M&S Services or Client's failure to install any Update whose installation would cure the non-conformance; (b) use of the Software other than in accordance with this Agreement and the Documentation; (c) any error, defect or non-conformance which cannot be reproduced; (d) modification of the Software by anyone other than Clockwork; or (e) third party hardware, software, databases or systems.

5.2 Professional Services. Clockwork warrants that the Professional Services will be performed in a professional and workman-like manner; provided that Client notifies Clockwork within thirty (30) days of performance of the Professional Services that Client believes were not performed as warranted. No specific result from the provision of Services is assured or guaranteed.

5.3 Remedies.

(a) For any breach of the warranties contained in Sections 5.1, Clockwork shall as Client's sole and exclusive remedy: (i) repair or replace the non-conforming Software after receiving notice from Client of such nonconformance within the warranty period; or (ii) in the event such repair or replacement is commercially impractical, refund the amount of Subscription Fees paid by Client for the non-conforming Software upon return of the Software to Clockwork and the execution of an amendment to this Agreement by Client pursuant to which the license for the portion of the Software for which Client is receiving a refund is terminated.

(b) For any breach of the warranties contained in Section 5.2, Clockwork shall as Client's sole and exclusive remedy: (i) re-perform the Professional Services which were not performed as warranted at no additional charge after receiving notice from Client of such nonconformance within thirty (30) days following the date such Service were performed; or (ii) in the event Clockwork is unable to re-perform such Professional Services after exercising commercially reasonable efforts to do so, refund the fees paid to Clockwork for the Professional Services which were not performed as warranted.

(c) Client acknowledges and agrees that it has made its own evaluation in deciding to license the Software. The warranties provided in this Agreement extend solely to Client and to no other person or entity whatsoever. Without limiting the foregoing, Clockwork is not responsible for (i) the accuracy, reliability, timeliness or completeness of Client's or any third party's data or other information transmitted, monitored, stored or received using the Software; or (ii) the results that may be obtained from use of the Software.

5.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, CLOCKWORK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SOFTWARE OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. CLOCKWORK EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF

DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. CLOCKWORK DOES NOT WARRANT THAT THE SOFTWARE OR THE SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR THAT ALL SOFTWARE ERRORS CAN OR WILL BE CORRECTED. CLIENT ACKNOWLEDGES AND AGREES (A) THAT IT HAS NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SET FORTH IN THIS SECTION 5; AND (B) THAT CLIENT HAS READ AND UNDERSTOOD SECTION 9, WHICH SETS FORTH CLOCKWORK'S MAXIMUM LIABILITY IN THE EVENT OF LOSS OR DAMAGE TO CLIENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO PORTIONS OF THE ABOVE EXCLUSIONS MAY NOT APPLY.

6. Confidentiality.

6.1 Confidentiality. Each party (the "Receiving Party") acknowledges that it will have access to Confidential Information and Trade Secrets of the other party (the "Disclosing Party"). For purposes of this Agreement, "Trade Secrets" means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and "Confidential Information" means information, other than Trade Secrets, that is of value to Disclosing Party and is treated as confidential. Clockwork's Trade Secrets and Confidential Information include, without limitation, the Software, object and source code for the Software, and any associated Documentation and other documentation relating to the Software; information concerning Clockwork's plans for Software, functionality, or service offerings; business policies and practices; information identified as proprietary or confidential by Clockwork; any agreements and the terms, conditions and pricing contained in this Agreement; information received from others that Clockwork has agreed to keep confidential or not disclose; Clockwork's research activities and plans, marketing and sales plans, strategic plans, forecasts, pricing and pricing strategies, methods of operation, internal controls, security procedures, and client lists; unpublished financial information; and information presented to Client in focus groups, guide groups or other advisory groups sponsored by Clockwork or its clients. The Receiving Party agrees to use the Trade Secrets and Confidential Information of the Disclosing Party solely for purposes of performing its obligations or exercising its rights under this Agreement. The Receiving Party agrees to discuss the Trade Secrets and Confidential Information of the Disclosing Party only with, and to transmit the Trade Secrets and Confidential Information only to, those officers, employees and consultants of the Receiving Party who have a need to know the Trade Secrets or Confidential Information for the purposes set forth herein and who have agreed in writing to be bound by the terms of this Agreement. The parties acknowledge and agree that the terms of any previously executed confidentiality or nondisclosure agreements shall remain in effect with respect to the information exchanged thereunder.

6.2 Security Precautions. The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Trade Secrets and Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Trade Secrets and Confidential Information, but in no event less than a reasonable standard of care.

6.3 Duration and Exceptions. With regard to Confidential Information, the obligations in this Section 6 shall continue for the term of this Agreement and for a period of five years thereafter. With regard to Trade Secrets, the obligations in this Section 6 shall continue for so long as such information constitutes a trade secret under applicable law, but in no event less than the term of this Agreement and for a period of five (5) years thereafter. The Receiving Party's obligations with respect to Trade Secrets and Confidential Information of the Disclosing Party shall not apply to the extent such Trade Secrets or Confidential Information: (a) are previously known to the Receiving Party without restriction on disclosure; (b) cease to be secret or confidential except by reason of a breach of this Agreement by the Receiving Party; (c) are independently developed by the Receiving Party without reference to the Trade Secrets or Confidential Information of the Disclosing Party; or (d) were received from a third party without obligations of confidence and without breach of this Agreement. In addition, the Receiving Party may disclose Trade Secrets and Confidential Information of the Disclosing Party to the extent such disclosure is required by applicable law or by any governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information. Clockwork recognizes that courts of competent jurisdiction may require certain information to be released despite being characterized by the vendor as "confidential." When the end user is an instrumentality of

the U.S. Government, neither this EULA nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect.

6.4 Use of the Internet. The parties understand and acknowledge that the Internet and communications over it may not be secure, and that connecting to it provides the opportunity for unauthorized access to computer systems, networks, and all data stored therein. The information and data transmitted through the Internet or stored on any equipment through which Internet information is transmitted may not remain confidential and neither party makes any representation or warranty regarding privacy, security, authenticity, non-corruption or destruction of any such information. Use of any information transmitted or obtained over the Internet is at each party’s own risk and neither party shall be responsible to the other for any adverse consequence or loss whatsoever from use of the Internet.

7. Intellectual Property Rights.

7.1 Clockwork’s Intellectual Property. Clockwork (or its licensors) retains title to the Software, and all copyright and other intellectual property and proprietary rights to all portions of the Software, and all modifications, alterations, derivative works, and enhancements thereto, and all copies thereof. Client agrees at all times to keep the Software free of all security interests, liens, encumbrances, mortgages and claims whatsoever, and Client agrees that neither it nor anyone at its direction shall file a financing statement, mortgage, notice of lien, deed of trust, security agreement or any other agreement or instrument creating or giving notice of an encumbrance or charge against the Software. Except as specified herein, Client does not acquire any rights, express or implied, in the Software, and has no right to commercialize or transfer the Software, in whole or in part, or any modifications, alterations, derivative works or enhancements thereto. No license, right, or interest in any Clockwork trademark, trade name or service mark is granted pursuant to this Agreement. Subject only to the following, title to all Work Product will at all times remain the sole and exclusive property of Clockwork or its licensors; provided that Clockwork shall not obtain any ownership rights in any works, Confidential Information, Client Data (as defined below) and other materials provided by, or on behalf of, Client. Upon request, Client agrees to execute such documents as may be reasonably requested by Clockwork to secure Clockwork’s rights in and to the foregoing. Clockwork hereby grants Client a perpetual, worldwide, royalty free (subject only to the fees provided for in a GSA Purchase Order for the Professional Services Terms), irrevocable (except as otherwise provided herein), non-exclusive right and license to copy, use, modify and sub-license all Work Product, to the same extent as if Client were the sole owner thereof, without an obligation to account to Clockwork.

7.2 Client Data. Client shall own any data, information or material that it provides with respect to this Agreement (“Client Data”). Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, timeliness, appropriateness, and intellectual property ownership or right to use all Client Data, and Clockwork shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store Client Data for any reason. In the event this Agreement is terminated, Clockwork will make available to Client a file of the Client Data in its possession, if any, within thirty (30) days following Client’s request; provided such request is made within thirty (30) days following termination of the Agreement.

7.3 Restricted Rights. The Software was developed at private expense, is commercial, and is published and copyrighted. Except as required by law or legal process, the Software may be transferred to the U.S. government only with the prior written consent of an officer of Clockwork and solely with “Restricted Rights” as that term is defined in FAR 52.227-142) (or DFAR 252.227-7015 if the transfer is to a defense-related agency) or subsequent citation. If Client is an agency of the United States government or licensing the Software for operation on behalf of the United States government, the Software is licensed to Client with rights no greater than those set forth in Federal Acquisition Regulation 52.227-14 or DFARs 252.227-7015 if the Client is a defense-related agency or subsequent citation.

8. Defense and Indemnification.

8.1 Limited Covenant to Defend. Clockwork will indemnify the GSA Customer if any third party claim is brought against Client in the United States to the extent that the claim, if true, would constitute an infringement or misappropriation by the Software of any registered, valid and subsisting patent or copyright recognized under the laws of the United States. Clockwork will be given an opportunity to intervene in any suit or claim filed against the GSA Customer, at its own expense, through counsel of its choosing. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to

defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(8.2) Injunctions Obtained by Third Parties. If a third-party infringement claim, of which Clockwork is notified in accordance with Section 8.1 (or of which Clockwork is otherwise aware or believe is likely) results, or in Clockwork's opinion is likely to result, in an injunction prohibiting Client from continued use of the Software that is the subject matter of the claim, then Clockwork shall, in its sole discretion and at its expense: (a) procure for Client the right to continue to use the Software that is the subject matter of the claim; (b) replace or modify the Software that is the subject matter of the claim to make it non-infringing, but, where reasonably possible, preserving the functionality of such Software; or (c) terminate the license for the infringing Software, and return a prorated portion of the Subscription Fees paid by Client for the infringing Software, prorated over a three (3) year term from the effective date of the applicable Schedule.

8.3 Exceptions to Duties to Defend and Indemnify. Notwithstanding any other provisions hereof, Clockwork shall have no obligation to indemnify or defend Client for any third party claim pursuant to this Section 8, nor be required to pay losses, damages or expenses under this Section 8, if the claim arises out of, in whole or in part: (a) a modification of the Software by anyone other than Clockwork; (b) use of the Software other than in accordance with the Documentation or the terms of this Agreement; (c) use of a release of the Software without having implemented Updates, the use of which would have cured the alleged infringement; (d) use of the Software in combination with any third party hardware, software, database or materials where, absent such combination, the Software would not be infringing; or (e) Client's negligence or willful misconduct.

8.4 Sole Obligation. This Section 8 states Clockwork's sole obligation, and Client's sole and exclusive remedy, with respect to infringement of proprietary and intellectual property rights.

9. Limitation on Liability.

9.1 EXCLUSION OF DAMAGES. IN NO EVENT SHALL CLOCKWORK OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE, DELAY OR MALFUNCTION), EVEN IF CLOCKWORK HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

9.2 LIMITATION OF LIABILITY. CLOCKWORK TOTAL AGGREGATE LIABILITY TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE SUBSCRIPTION FEES PAID BY CLIENT TO CLOCKWORK DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO CLIENT'S FIRST CLAIM.

9.3 EXCEPTIONS-

The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Clockwork's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

10. Term and Termination.

10.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the provisions herein. Unless otherwise set forth therein, the initial term of each Schedule shall be for five (5) years, commencing on the applicable Schedule Effective Date, and shall, unless terminated earlier as provided for herein.

10.2 Termination by Clockwork. When the end user is an instrumentality of the U.S., recourse against the U.S. for any alleged breach of this Agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. .

10.3 Termination by Client. Client may terminate a Schedule upon written notice to Clockwork if Clockwork materially breaches the applicable Schedule and fails to cure such material breach within thirty (30) days following receipt of written notice such material breach from Customer.

10.4

10.5

Sections 1, 4.3, 4.6, 5.4, 6, 7, 8.4, 9, 10.6, 11 and 12 shall survive any termination of this Agreement in accordance with their respective terms. In the event of any termination hereunder, Client shall not be entitled to any refund of any payments made by Client.

11. Dispute Resolution; Governing Law.

United States Federal law shall govern this Agreement. Venue is mandated by applicable Federal law. 12. Miscellaneous.

12.1 Force Majeure. Neither party will be liable for any loss, damage or delay resulting from any event beyond such party's reasonable control, and delivery and performance dates will be extended to the extent of any delays resulting from any such event. Each party will promptly notify the other upon becoming aware that any such event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement.

12.2 Assignment. Client shall assign, transfer, or otherwise delegate any of its rights, duties, or obligations under this Agreement in whole or in part to any entity without prior written consent from Clockwork, which consent shall not be unreasonably withheld, and any attempted assignment (whether by operation of law or otherwise) shall be void. Assignment of the rights, duties, or obligations of the Agreement owed by Clockwork to the GSA Customer is subject to applicable FAR provisions and clauses. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

12.3 Independent Contractors. Nothing in this Agreement shall be construed to create an agency, joint venture, partnership or other form of business association between the parties. Neither party has the right or authority to make any contract, representation or binding promise of any nature on behalf of the other party, and neither party shall hold itself out as having such right or authority.

12.4 No Waiver. The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

12.5 Headings. The headings in this Agreement are for purposes of reference only and are not intended to affect the meaning or interpretation of this Agreement.

12.6 Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

12.7 Counterparts. This Agreement may be executed in duplicate and either copy or both copies are considered originals.

12.8 Notices. All official notices required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified, registered mail or next day express mail or courier, postage prepaid. Any such notice shall be deemed given (a) when so delivered personally; (b) the day after, when sent by next day express mail or courier; or (c) three (3) days after, when sent by certified or registered mail, as follows:

(i) If to Client, to it at:

(ii) If to Clockwork, to it at:
Clockwork Solutions, LLC
Attention: Joe Berti
Las Cimas III, Suite 100
805 Las Cimas Parkway
Austin, Texas 78746

In addition, routine notices, consents and approvals given under this Agreement may be delivered in writing as provided above or through electronic mail or other electronic record addressed to the parties identified herein.

12.9 Non-Exclusivity. Clockwork shall not be limited or precluded in any way from providing Software or Services of any kind to any entity as it, in its sole discretion, deems appropriate.

12.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, and no other person or entity shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

12.11 Non-Solicitation. Neither party, directly or indirectly, shall hire or solicit for employment (including for employment by a parent or subsidiary) any employee of the other with whom the party has significant contacts arising out of this Agreement or the providing of Services hereunder during the term of this Agreement and for a period of one (1) year thereafter.

12.13 Entire Agreement. This Agreement together with the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Order(s). This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Master Software License and Services Agreement and to bind their respective party hereto.

CLIENT

CLOCKWORK SOLUTIONS, LLC

Authorized Signature

Authorized Signature

Printed Name and Title

Printed Name and Title

Date: _____

Date: _____

Exhibit A M&S Services Terms

These M&S Services Terms are hereby annexed to and made a part of the Agreement.

1. Definitions.

(a) “Designated Employees” means up to two (2) employees within Client’s organization who have been trained in the use and functionality of the Software and are conversant with the operation of the System.

(b) “Error” means a reproducible failure of the standard, unmodified Software to comply in a material respect with the applicable specifications set forth in the Documentation.

(c) “Fix” means a Workaround or the repair or replacement of object or executable code versions of Software to remedy an Error.

(d) “Level 1 Support” means day-to-day support given directly to end-users via a telephone hotline or a support website. Level 1 support personnel shall be available to: (i) answer questions from and provide instruction and guidance to end-users regarding the operation, features and functionality of the Software, (ii) receive and document questions, comments or complaints from end-users regarding possible problems with the Software, (iii) assist the end-users with preliminary problem diagnosis and, if possible, remediation or resolution, and (iv) if appropriate, contact Level 2 Support personnel for escalated technical support.

(e) “Level 2 Support” means advanced problem resolution in response to problems that cannot be remedied or resolved by Level 1 Support personnel. Remediation or resolution by Level 2 Support personnel may involve Software reconfiguration or instructing the end-user in proper installation and usage of the Software. Any Errors or other problems that cannot be remedied or resolved by Level 2 Support personnel, including Software problems that Level 2 Support personnel believe may constitute an Error, shall be documented by Level 2 Support personnel and reported to Level 3 Support personnel for escalated technical support.

(f) “Level 3 Support” means advanced problem resolution in response to significant problems relating to the Software that cannot be remedied or resolved by Level 2 Support personnel, usually requiring modification to the source code for the Software.

(g) “Priority 1 Error” means an Error in the Software that causes substantial downtime of the Software, or which causes substantial data corruption, or which otherwise renders the Software unusable. Errors given this priority have no viable Workaround.

(h) “Priority 2 Error” means an Error in the Software that results in the loss of critical functionality of the Software, but for which a Workaround is available; or non-critical functionality or interface issues for which there is no Workaround.

(i) “Priority 3 Error” means an Error in the Software that can be avoided or detoured with reasonable effort, general questions regarding the Software, Software enhancement requests, or Errors in Documentation.

(j) “Workaround” means a change in the procedures followed or that Clockwork supplies to avoid an Error without substantially impairing Client’s use of the Software. A Workaround may be either temporary or permanent in nature.

2. M&S. M&S Services are provided to Client from 8:00 A.M. to 5:00 P.M. U.S. Central Time, Monday through Friday, excluding banking holidays and other Clockwork observed holidays. M&S Services include:

(a) Level 3 Support to the Designated Employees for the Software;

(b) Fixes and Updates;

(c) Maintenance releases;

(d) Documentation updates;

(e) E-mail and telephone support to the Designated Employees at support@clockwork-solutions.com or the technical support phone number found at <http://www.clockwork-solutions.com>; and

- (f) Case tracking and escalation.

3. Exclusions.

- (a) Clockwork shall have no obligation to provide M&S Services for:
 - (i) Level 1 Support and Level 2 Support for the Software;
 - (ii) Computer-related problems not reasonably caused directly by Errors in the Software;
 - (iii) Maintenance and support for Client's computer-related hardware and Client's operating environment, or Errors resulting from Client's hardware or operating environment malfunction;
 - (iv) Any on-site support;
 - (v) Software that is altered, damaged or modified by anyone other than Clockwork, or any portion of the Software that is incorporated with or into other software except by Clockwork;
 - (vi) Software problems caused by changes requested by Client to the System environment following acceptance or Production Use of the of the Software;
 - (vii) Software problems caused by Client's use of the Software other than as specified in the Documentation, including without limitation, use of the Software for other than the specific purpose for which it is licensed;
 - (viii) Errors caused by Client's negligence or fault;
 - (ix) Errors that cannot be reproduced by Clockwork;
 - (x) Errors that do not measurably impair or affect the operation or use of the maintained Software;
 - (xi) Debugging or correcting problems in non-Clockwork software, or in combinations of Software supported by Clockwork and non-supported software products where the problem occurs in the non-Clockwork software product;
 - (xii) Consulting, implementation, integration, support to Custom Software, or training services that may be necessary to support Fixes, Updates, maintenance releases or product revisions;
 - (xiii) Software installed on any computer hardware that is not recommended by Clockwork or any computer or workstation not strictly complying with specifications listed in the applicable Documentation;
 - (xiv) If the Subscription Fees have not been paid in a timely manner;
 - (xv) Any Software other than the current version of the Software; or
 - (xvi) Responsibility for changes to or replacement of any Client hardware that may be necessary to use Software due to a Workaround, Fix or Update.
- (b) In the event a reported problem is outside of the scope of M&S Services, subject to Clockwork's consent, Client may elect to retain Clockwork's technical M&S Services staff work on the problem. Upon Client's request, an estimate of the cost of the out-of-scope services, based upon the rates established in the underlying GSA Schedule Contract and GSA Schedule Price List, will be prepared and delivered to Client for Client's review. Client then has the opportunity to execute a GSA Purchase Order for the additional technical services. (c) Clockwork has no obligation to release any Updates during any Contract Year pursuant to a development roadmap.

- (d) All M&S Services are provided in English.

4. Client Responsibilities.

- (a) Client shall report all suspected Errors through the Designated Employees to Clockwork's technical M&S Services staff. Reports will include, at a minimum, (i) the information required for Clockwork to reproduce the suspected Error, and (ii) the Designated Employee's name and telephone or email data. An operational script may be sufficient if the problem is not of a software language nature.
- (b) Client shall assist Clockwork in Clockwork's efforts to resolve confirmed Errors reported by Client.

(c) Only the Designated Employees may request M&S Services. Client shall answer its end users' support questions.

(d) Client shall ensure that any communications or documentation distributed by it to its end users clearly and conspicuously states that end users should call Client for technical support for the Software. Clockwork will have no obligation to furnish any assistance, information or documentation directly to end users. If Clockwork's technical M&S Services staff are being contacted by Client's end users then, upon Clockwork request, Client shall cooperate to stop such contact. (e) In certain situations, detailed information regarding Client's system environment may be necessary to affect a timely resolution. In these situations, and other integration/gateway related issues, Clockwork may require, in addition to the Designated Employees, the involvement of Client's information technology staff to provide the information necessary to assist in problem resolution. Client shall make such staff available to Clockwork in a timely manner.

(f) In situations involving Software outputs or other functionality, Clockwork may be required to review source data and system configurations in order to affect a Fix. Remote access to Client's operating environment is the preferred method to accomplish this. If Client is unable to provide Clockwork with remote access, Client agrees to make provisions to transfer configuration and planning data to Clockwork.

5. Requesting M&S Services. If Client experiences a problem, Client shall first refer to the Documentation and on-line help for possible solutions and suggestions. If Client is unable to resolve the problem, one of the Designated Employees may initiate support from Clockwork's technical M&S Services staff.

6. Technical Support Process.

(a) All M&S Services calls will be forwarded to Clockwork's trained and qualified technical M&S Services staff for problem resolution. Clockwork shall determine, at its discretion, based on availability of staff and experience, whether to allocate Client's M&S Services request to a named individual. In order to ensure continuity of service and professional call handling, Clockwork's shall undertake reasonable efforts not to reassign M&S Services personnel once they have been assigned to resolving a particular problem.

(b) Clockwork's technical M&S Services staff shall be responsible for the following activities:

- (i) Confirm Client's eligibility for M&S Services;
- (ii) Provide M&S Services to Client, when appropriate;
- (iii) Add or change Client's contacts in Clockwork's tracking system;
- (iv) Document case details and log in the tracking system;
- (v) Determine the nature of the problem;
- (vi) Determine case priority and Error classification;
- (vii) Advise Client of how the case shall be handled, and timeframes expected;
- (viii) Research and test possible solutions;
- (ix) Work with internal resources, as necessary, to ensure Error resolution;
- (x) Provide status reports to Client;
- (xi) Ensure that the Updates are properly installed and functioning; and
- (xii) Close the case.

7. Case Prioritization and Escalation.

(a) Clockwork shall use commercially reasonable efforts to resolve Errors by providing a Workaround, a Fix, or a specific action plan for how Clockwork will address the Error, and an estimate of how long it will take to rectify the Error.

(b) Clockwork shall assign a priority level to a problem upon initiation of the case. Estimated maximum resolution times are either the default estimate for similar cases as depicted in the table below or an estimated time agreed to by a Designated Employee and Clockwork's technical M&S Services staff.

(c) Case priority levels and associated estimated resolution times are as depicted herein:

Priority Level	Initial Response	Estimated Maximum Resolution Time
Priority 1 Error	1 business hour	4 business hours*
Priority 2 Error	2 business hours	Next maintenance release
Priority 3 Error	4 business hours	Next Product Release

* Reflects the estimated maximum resolution time, working on a diligent efforts basis, after the Error is reproduced, to return Client to production status, but does not include total administrative time required for a new code release to be at “general availability” status.

Exhibit B
Professional Services Terms

These Professional Services Terms are hereby annexed to and made a part of the Agreement. .

1. Professional Services. Upon request by Client, Clockwork will provide consultants to perform the Professional Services identified in any mutually agreed upon Purchase Orders executed by the GSA Client more fully describing the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Purchase Order shall reference the Agreement and be sequentially numbered. Any material modifications to a Purchase Order (including without limitation modifications to the fees, specifications or work plan) shall be made by written change order, in Clockwork's standard form, executed by both parties to this Agreement (a "Change Order"). Each Change Order complying with this Section shall be deemed to be an amendment to the applicable Purchase Order to which it applies and shall become a part thereof.

2. Cooperation. All Professional Services will be coordinated with the designated Client representative, as identified in each Purchase Order. Client shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. Client shall at all times make available its functional and/or information technology personnel as reasonably required or desirable for Clockwork to perform the Professional Services, and Client shall timely fulfill its obligations and responsibilities set forth in each Purchase Order. To the extent required or as specified in any Purchase Order, Client shall provide Clockwork with access to its facilities, software, systems, data, information and support materials to perform the Professional Services. Client acknowledges that Clockwork's performance hereunder is contingent on Client's timely and effective performance of Client's responsibilities and Client's timely decisions and approvals.

3. Project Control. . Clockwork will endeavor to honor a request for a specific consultant, subject to staffing or scheduling considerations; provided, however, Clockwork reserves the right to determine the assignment of its personnel. Clockwork may subcontract all or a portion of the Professional Services to a qualified third party. In recognition that Clockwork personnel may perform similar services for third parties, this Agreement shall not prevent Clockwork from providing services or developing materials that may be perceived as competitive with those developed or provided hereunder, subject to the confidentiality provisions of the Agreement.

- 4.
- 5.

**SCHEDULE NUMBER [REDACTED]
TO THE
MASTER SOFTWARE SUBSCRIPTION AGREEMENT**

This independent Schedule Number [REDACTED] (“Schedule”) to the Master Software Subscription Agreement is made as of [REDACTED], 201[REDACTED] (“Schedule Effective Date”), by and between Clockwork Solutions, LLC (“Clockwork”) and [REDACTED] (“Client”). This Schedule is part of the Master Software Subscription Agreement between the parties dated [REDACTED], 201[REDACTED] (“Agreement”). Capitalized terms used and not otherwise defined in this Schedule shall have the respective meanings set forth in the Agreement.

Description of the Software [specify versions]	Initial Schedule Term	Subscription Fees per Contract Year (during the initial Schedule term)	Total Subscription Fees ¹ (during the initial Schedule term)
[REDACTED] Software, Version [REDACTED]	5 Years	\$ [REDACTED]	\$ [REDACTED]
[REDACTED] Software, Version [REDACTED]	5 Years	\$ [REDACTED]	\$ [REDACTED]
[Other], Version [REDACTED]	5 Years	\$ [REDACTED]	\$ [REDACTED]
SUBTOTAL OF SUBSCRIPTION FEES:		\$ [REDACTED]	\$ [REDACTED]
Initial Implementation Fees			\$ [REDACTED]
TOTAL INITIAL FEES:			\$ [REDACTED]

- Schedule term:** 5 Years following the Schedule Effective Date
 - Incremental Fees.** [Please select the appropriate wording below]. The initial Subscription Fee set forth above in this Schedule for the [REDACTED] Software is based on Client’s use of the [REDACTED] Software to manage Client’s [Asset Cost with a value not to exceed \$ [REDACTED]] [or] [Asset Inventory for up to [REDACTED] components or parts]. Client must obtain Clockwork’s prior written consent for use of the [REDACTED] Software in excess of such limitations **Separate Agreement.** Clockwork may provide Professional Services regarding the Software licensed hereunder pursuant to a GSA Purchase Order to the Professional Services Terms executed between the parties. Client understands and agrees that such Professional Services and associated Purchase Orders that may be signed are separate and independent contractual obligations from any Schedule or amendment thereto relating to the license of Software.
5. 5.1 5.3
 5.4

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Schedule and to bind their respective party hereto.

ACCEPTED BY:
CLIENT

ACCEPTED BY:
CLOCKWORK SOLUTIONS, LLC

Authorized Signature

Authorized Signature

Printed Name and Title

Printed Name and Title

