

NEBRASKA

Good Life. Great Service.

DEPT. OF ADMINISTRATIVE SERVICES



Pete Ricketts, Governor

4/27/2020

Mr. Speaker
State Capitol
P.O. Box 94604
Lincoln, NE 68509

Dear Mr. Speaker,

The Administration has received several requests from Senators requesting a copy of the contracts supporting our Test Nebraska initiative. As Governor Ricketts has stated, Test Nebraska will increase our COVID-19 testing capacity in the coming weeks to 3,000 tests daily, a key milestone in overcoming the COVID-19 pandemic and easing the restrictions that have been placed upon Nebraskans. These contracts will contribute directly to our efforts to assure Nebraska of a consistent supply of additional testing equipment, collection kits, and the necessary consumables. Additionally, the citizen information collected by the assessment portion is owned and protected by the state.

You will note that the Master Services Agreement with Qualtrics appears to have redactions. These redactions are actually deletions performed by Qualtrics before the State signed the agreement. The deleted or "redacted" text represents contractual terms that were specific to Qualtrics' agreement with Utah. The remaining language reflects the entire agreement between the State and Qualtrics.

We appreciate your leadership and the support of your colleagues in helping our State respond to this public health emergency.

Sincerely,

Jason Jackson
Director, Department of Administrative Services

CC: Members of the Legislature
Senator Albrecht, District 17

Jason Jackson, Director

Department of Administrative Services

1526 K Street, Ste. 250
Lincoln, Nebraska 68508

OFFICE 402-471-2331
FAX 402-471-3754

das.nebraska.gov

Senator Arch, District 14
Senator Blood, District 3
Senator Bolz, District 29
Senator Bostelman, District 23
Senator Brandt, District 32
Senator Brewer, District 43
Senator Briese, District 41
Senator Cavanaugh, District 6
Senator Chambers, District 11
Senator Clements, District 2
Senator Crawford, District 45
Senator DeBoer, District 10
Senator Dorn, District 30
Senator Erdman, District 47
Senator Friesen, District 34
Senator Geist, District 25
Senator Gragert, District 40
Senator Groene, District 42
Senator Halloran, District 33
Senator Hansen, District 16
Senator Hansen, District 26
Senator Hilgers, District 21
Senator Hilkemann, District 4
Senator Howard, District 9
Senator Hughes, District 44
Senator Hunt, District 8
Senator Kolowski, District 31
Senator Kolterman, District 24
Senator La Grone, District 49
Senator Lathrop, District 12
Senator Lindstrom, District 18
Senator Linehan, District 39
Senator Lowe, District 37
Senator McCollister, District 20
Senator McDonnell, District 5
Senator Morfeld, District 46
Senator Moser, District 22
Senator Murman, District 38
Senator Pansing Brooks, District 28
Senator Quick, District 35
Senator Slama, District 1
Senator Stinner, District 48
Senator Vargas, District 7
Senator Walz, District 15
Senator Wayne, District 13
Senator Williams, District 36
Senator Wishart, District 27





SERVICE ORDER

Customer Name:

State of Nebraska

Primary Contact: Doug Carlson

Primary Contact Phone: (402) 471-6500

Original Service Order Effective Date:

April 19, 2020

Initial Term End Date: April 18, 2021

Subscription Services		Annual Fees (US\$)
State Government Platform Package: <ul style="list-style-type: none"> • Domo Platform (prod 7) <ul style="list-style-type: none"> ○ Unlimited Authorized Users with Customer's base email address (e.g., [state].gov) ○ Connections: Maximum 20 active data connectors ○ Storage: Unlimited (for COVID-19 related data and any other data, as determined by the State of Nebraska) ○ Table Size: Maximum up to 50M data rows per table ○ Data Refresh: 15-minute (dependent on data source refresh rate ability) • Queries: Up to 20 million data queries per month • Up to 3 Applications (such as PPE Management Application, ICU Bed Application, and Governor Application) • Domo Embed (includes up to 500K impressions per month across 5K private Embed viewers) 		\$1,500,000
Total Annual Subscription Fees		\$1,500,000
One-time Services		One-time Fees
Consulting Services: for support of end-user subscriber's Covid-19 response efforts (services expire after one year); Additional consulting services are available for purchase at \$250 per hours; hours expire after one year.	QTY:	\$500,000
One-time Fees		\$500,000
Total Initial Fees		\$2,000,000
Payment Schedule		Invoice Amount
One-time Fees	Consulting services for Covid-19 response efforts Included in the Nomi Contract price and invoiced through Nomi.	\$500,000
Subscription Fees	Initial Term (Year 1) – Included in the Nomi Contract price and invoiced through Nomi. Renewal Terms - Invoice annually in advance beginning on Effective Date, payment due Net 30	\$1,500,000

Terms and Conditions

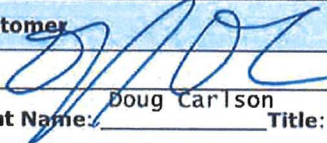
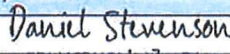
1. **Nomi Contract.** The State of Nebraska ("Customer") and Nomi Health Inc. ("Nomi") entered into a TestNebraska contract dated April 19, 2020 (the "Nomi Contract") for services, which services include the Subscription Services and Consulting Services described above in this Service Order. The Nomi Contract is for the period from the above Effective Date to the Initial Term End Date.
2. **Renewal.** On the Initial Term End Date and upon expiration of each renewal term, this Service Order may be renewed by the parties by agreement in writing for a successive 12-month term with a price increase of no more than 5% at such renewal.
3. **Agreements Incorporated by Reference.** The Services are provided subject to the Domo Services Agreement located at <http://www.domo.com/gov-service-terms> (the "Services Agreement") and the Business Associate Agreement located at: <http://domo.com/baa>. Capitalized terms used but not defined in the Service Order have the meaning set forth in the Services Agreement. Customer agrees to the terms and conditions in the Services Agreement except to the extent such terms and conditions conflict with the terms and conditions in Attachment A of the Nomi Contract. In the case of such conflict, the terms and conditions of Attachment A (as modified pursuant to Section 4 below) shall apply and control between the Services Agreement between Customer and Domo, Inc.
4. **Attachment A Revised Terms.** Notwithstanding anything to the contrary, Customer and Domo, Inc. ("Domo") agree that the following terms of Attachment A are removed and modified as follows:
 - a. **Section 1 (Definitions).** The definitions of Custom Deliverable and Work Product under Section 1(e) and 1(l) are deleted.
 - b. **Section 14 (Termination) and Section 15 (Non-Appropriation of Funds).** The following sentence is added: "Notwithstanding any termination under Section 14 or Section 15 (except a termination for material breach), such termination is only available without refund.
 - c. **Section 17 (Warranty of Procurement).** Section 17 is deleted.
 - d. **Section 46 (Joint and Several Liability).** Section 46 is deleted.
 - e. **With regard to Section 2 (Scope of Work), Section 3 (Pricing), Section 4 (Project Managers) and Section 5 (Additional Technology License Acceptance),** only the provisions relating to Domo and Domo Service are



SERVICE ORDER

incorporated into this Service Order. By way of clarification, Domo is solely responsible for providing the Domo Service, but is not responsible for providing the hardware, medical-related supplies or services specified in Sections 2 through 5.

5. **TECHNOLOGY ACCESS STANDARDS:** Domo shall review the Nebraska Technology Access Standards, found at <http://nltc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Domo's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.
6. **CONTRACT CLOSEOUT:** Upon termination of this Service Order for any reason the Domo shall within 30 days, unless stated otherwise herein: 1) Transfer all completed or partially completed non-proprietary deliverables to the State; 2) Return to the State all information and data, unless the Domo is permitted to keep the information or data by contract or rule of law. Domo may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Domo's routine back up procedures; 3) Cooperate with any successor Contactor, person or entity in the assumption of any or all of the obligations of this contract; 4) Cooperate with any successor Contactor, person or entity with the transfer of information or data related to this contract; 5) Return or vacate any state owned real or personal property; and, 6) Return all data in a mutually acceptable format and manner. Nothing in this Section should be construed to require the Domo to surrender intellectual property, real or personal property, or information or data owned by the Domo for which the State has no legal claim.
7. Domo agrees to comply with the Nebraska Fair Employment Practice Act.
8. Domo certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Domo agrees to provide a copy of its drug free workplace policy at any time upon request by the State.
9. **Sensitive Data.** Notwithstanding anything to the contrary in Section 9.3 (Sensitive Personal Data) of the Services Agreement, Customer is specifically permitted to upload into the Service, and otherwise provide for processing by the Service, COVID-19 related health assessment and testing data. The data security protections and requirements under Section 8.1 of the Services Agreement apply to all such uploaded Customer data.
10. **References.** Customer agrees that Domo may disclose and describe the Service provided to Customer.

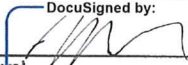
Customer	Domo, Inc. Signed by:
By:  Date: 4/21/2020	By:  Date: 21-Apr-2020
Print Name: Doug Carlson Title: Material Administrator	Print Name: Daniel Stevenson Title: Chief Legal Officer
Billing Address: 1526 R of Lincoln NE 68508	Address: 772 E. Utah Valley Drive American Fork, UT 84003
Billing Contact: Doug Carlson	Attention: Finance Department
Billing Phone Number: 402-471-6000	Phone Number: (801) 805-9400
Billing E-Mail Address: doug.carlson@nebraska.gov	E-Mail Address: orders@domo.com
Project Manager: Name Doug Carlson	Account Executive:

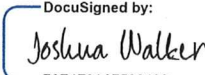
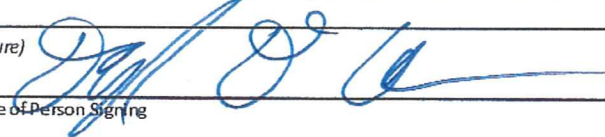
Nebraska Department of Administrative Services

Contracts Declaration & Execution Page

This Agreement is entered into between the State of Nebraska (by and through its agency, the Department of Administrative Services) and the Contractor named below: Nomi Health, Inc.		
State Agency's Name: State of Nebraska Department of Administrative Services		
Contractor's Name: Nomi Health, Inc.		
Contract to Begin: April 19, 2020	Date of Expiration: April 18, 2021	Annual Extensions: Not Applicable
The parties agree to comply with the terms and conditions and attachments ("Attachment A") which are by this reference made a part of the Contract :		
Section 1 – Terms & Conditions.....Page 2		
Section 2 – Scope of Work.....Page 7		
Section 3 – Pricing.....Page 9		
Section 4 – Contacts.....Page 9		

WITNESS WHEREOF, this Agreement has been executed by the parties hereto

DocuSigned by: 		Contractor:
By (Authorized Signature) Mark Newman	223420503132440... CEO	Date Signed 4/19/2020
Printed Name and Title of Person Signing 898 North 1200 West Orem, UT 84057		
Address		

DocuSigned by: 		
State of Nebraska: Department of Administrative Services		
By (Authorized Signature) 		Date Signed 4/19/2020
Printed Name and Title of Person Signing Doug Carlson / Chief Procurement Officer for Nebraska and Materiel Administrator		
Address 1526 K Street, Lincoln, NE 68508		

Attachment A

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The State reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Nebraska cover page(s) that the State and Contractor signed.
 - d) **"Contractor"** means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the State under this Contract.
 - f) **"Procurement Item"** means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the State under this Contract.
 - g) **"Response"** means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State's Solicitation.
 - h) **"Solicitation"** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - i) **"State"** means the State of Nebraska.
 - j) **"State of Nebraska"** means the State of Nebraska, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - k) **"Subcontractors"** means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - l) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the State. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Nebraska. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Nebraska. Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation and the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations;
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State to Contractor under this Contract. These records shall be retained by Contractor for at least one (1) year after final payment or completion of any required audit (whichever is later). Contractor agrees to allow, at no additional cost, the State of Nebraska, federal auditors, State staff, or their designees, access to all such records during normal business hours with 30 days' notice and to allow interviews of any employees or others who might reasonably have information related to such records within reason. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
5. **PERMITS:** If necessary, Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **QUALIFICATIONS OF STAFF:** The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Nebraska Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Nebraska Administrative Code.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State, unless disclosure has been made to the State.

8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State of Nebraska.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall fully indemnify, defend, and save harmless the State from all claims, losses, suits, actions, damages, and reasonable costs of every name and description arising out of all third party claims based on Contractor's performance of this Contract caused by any negligence or intentional misconduct of Contractor, its agents, employees, officers, partners, and Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage directly due to the fault of the State. The State must (a) give Contractor prompt written notice of the claim; (b) grant Contractor full and complete control over the defense and settlement of the claim; (c) aid in connection with the defense and settlement of the claim as Contractor may reasonably request; and (d) comply with any settlement or court order made in connection with the claim. The State will not defend or settle any claim under this subsection without Contractor's prior written consent. Any limitations of the Contractor's liability will not apply to injuries to persons, including death, or to damages to real property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; (v) the Nebraska Fair Employment Practice Act.

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) business days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State, upon thirty (30) days written termination notice being given to the Contractor. The State and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the State be liable to the Contractor for compensation for any good neither requested nor accepted by the State. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State, if the State reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative actor by order of the President or the Governor.

If a written notice is delivered under this section, the State will reimburse Contractor for the Procurement Item(s) properly ordered and/or Services properly performed until the effective date of said notice. The State will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from the State's funds and used in the

exercise of the State's essential functions as the State of Nebraska. Upon request, the State will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to the State under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

Remedies available to the State under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the State within ten (10) days of any written notification informing Contractor of the Goods not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State may otherwise have under this Contract.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Nebraska. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate. The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the following mandatory COI liability waiver language: "With respect to Commercial General Liability insurance, the State of Nebraska is as an Additional Insured and the policy shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Nebraska. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **DATA PROTECTION:** Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data, Customer Property, and the Application Services, System(s), or any related Deliverables. Storage, Processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America.
20. **PUBLIC RECORDS:** The laws of the State of Nebraska require procurement records to be made public unless otherwise provided by law.
21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Delivery will be made to the location designated in writing by the State. Time is of the essence with respect to Contractor's delivery of goods and provision of services pursuant to this Contract.
22. **ACCEPTANCE AND REJECTION:** The State shall have seven (7) business days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the State.

If Contractor delivers nonconforming Procurement Item(s), the State may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without first, disclosing the former rejection or requirement

for correction; and second, obtaining written consent of the State to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the State. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Response or on its invoice. The State has the right to adjust or return any invoice reflecting incorrect pricing.
24. **PAYMENT:** Payments are to be made within seven (7) days after a correct invoice is received. All payments to Contractor will be remitted by mail or, electronic funds transfer. The acceptance by Contractor of final payment, without a written protest filed with the State within ten (10) business days of receipt of final payment, shall release the State and the State of Nebraska from all claims and all liability to the Contractor. The State's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State may have against Contractor. The State will not allow the Contractor to charge end users electronic payment fees of any kind.

In the event that the Contractor owes the State any sum under the terms of this Contract, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. The State shall maintain sole ownership of data on an individual and aggregate level. Contractor collects and uses Usage Data for its internal research and development purposes and may disclose Usage Data in an aggregated format that in no way identifies Buyer or any particular Authorized User or End User.
27. Reserved
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State.
29. **REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State may issue a written notice of default providing a thirty (30) calendar day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State; or (v) demand a full refund of any payment that the State has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State, including anyone for whom the State is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the State for written approval all advertising and publicity matters relating to this Contract. It is within the State's sole discretion whether to provide approval, which approval must be in writing. The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State.
33. **WORK ON STATE OF NEBRASKA OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on State of Nebraska premises, owned or otherwise controlled or operated by the State, shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The State of Nebraska may remove any individual for a violation hereunder.
34. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
35. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the State.
36. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
37. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Nebraska is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Nebraska, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
38. **Reserved**
40. **REIMBURSEMENT EXPENSES:** The State has established rules for limitations on reimbursement expenses. Please Reference State of Nebraska, Department of Administrative Services - State Accounting Manual (accessible on the internet: http://das.nebraska.gov/accounting/manual/manual_grouped.html) for limits on travel expenses.
41. **CONTRACTOR ASSIGNMENTS OF RIGHTS – ANTITRUST CLAIMS:** In consideration of the mutual promises contained herein, Contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Nebraska all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Nebraska relating to the subject of the Contract.
42. **Reserved**
43. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Nebraska's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's or third party's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or third party, require the State to indemnify the Contractor or a third party, or limit the rights of the State is null and void.
44. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
45. **THIRD-PARTY BENEFICIARIES:** There are no third-party beneficiaries to the Contract. This Contract is intended only to benefit the State and the Contractor.
46. **JOINT AND SEVERAL LIABILITY:** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation, or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.
47. **NOTICE:** Any and all notices, designations, consents, offers, acceptances, or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract Declarations and Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided (1) at the time actually received; or (2) within one day in the case of overnight hand delivery, courier, or other delivery service with guaranteed next day delivery; or (3) within five days after it is sent registered via U.S. Mail. The parties may, by written agreement, provide notices by a different method than described above. Such written agreement must specify which notices may be given by a different method than described above.

If to State of Nebraska: State of Nebraska
Nebraska Department of Administrative Services
Attn: Doug Carlson, Materiel Administrator
1526 K Street
Lincoln, Nebraska 68508

with a copy to: State of Nebraska
Department of Administrative Services
Attn: General Counsel
1526 K Street
Lincoln, Nebraska 68508

If to Nomi Health, Inc:
Nomi Health
898 N 1200 W, Orem Utah
Attn: Legal Dept

48. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
49. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.
50. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same agreement.
51. **TECHNOLOGY ACCESS STANDARDS:** Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.
52. **CONTRACT CLOSEOUT:** Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein: 1) Transfer all completed or partially completed non-proprietary deliverables to the State; 2) Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures; 3) Cooperate with any successor Contractor, person or entity in the assumption of any or all of the obligations of this contract; 4) Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this contract; 5) Return or vacate any state owned real or personal property; and, 6) Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

SECTION 2

Scope of Work

2.1 General Specifications

- Phase 1 – (Timeline: On or before April 27, 2020)
 - Release digital health assessment to public via media, State, Health Department, Chamber of Commerce, employers and other community organizations.
 - Assessment will capture: Individual demographics, symptoms, contact with others, contact information (email & phone), zip code, home address. Patient also create user account as an option for future communication. Can add - living arrangement, number of individuals in household, travel history.
 - Assessment will score individuals in 5 categories Clear, Green, Yellow, Red, Black based on symptoms and other evidence-based criteria, as well as known contact with others with symptoms.

- Assessment will be delivered in English and Spanish.
- Phase 2 (Timeline: On or Before April 30, 2020)
 - Establish mobile testing centers in already known areas near easily accessible roads (e.g. major metro zones or highway access points) to enable easy and quick testing access.
 - Combine the data on positive COVID-19 tests and individual demographic and health characteristics to help the State identify the characteristics of individuals that might be at high risk. High risk means those individuals that fall in to categories that if they contracted Covid-19 would be in a highly compromised state.
 - Respondents who are identified by the survey assessment to qualify for a test are pushed to an online scheduling tool of testing site availability to keep crowds manageable and at a minimum and throughput at a maximum.
 - Optional: If individuals in the pool test positive and are in high-risk category consider medication treatment (e.g. Hydroxychloroquine or Chloroquine) administered by the Health Department in order to keep hospital bed load low.
- Phase 3 (Timeline: On or Before May 10, 2020)
 - In the next iteration, use the predictive information gained in data of phase 2 to select community groups, employer groups, households or high-risk individuals for the next wave

2.2 Services

Contractor shall provide Digital Health Assessment and Workflow Tool Integrating Testing as follows:

1. Website + Statewide web digital health assessment platform and assessment questionnaire with associated data and scoring mechanisms of individual assessment takers and workflow to integrate scheduling and inventory tracking with mobile testing location.
2. Assessment will capture the data of respondents: Individuals demographics, symptoms, contact with others, personal contact information (email & phone), zip code, date of birth, and home address. Respondents also create a user account for ongoing future communication and provide the State with invaluable early data around the severity of the spread of COVID-19 within the State. This data will also be able to quickly support the acquisition of more accurate R0.
3. Based on algorithm the assessment will score individuals in 5 categories clear, green, yellow, red, and black based on the assessment data provided by the respondent. Such algorithm shall be provided to the State. Contractor shall also provide to State a written explanation of such algorithm so that State are easily able to ascertain how individuals are scored and how individuals are chosen or selected for testing.
4. This tool will serve as the main workflow tool and from digital health assessment to → testing → to lab → to respondent communication around follow-up, further related communication, test result and other needed communication via email, phone or text message.
5. Digital scheduling platform to facilitate and maximize mobile patient testing throughput, increase State testing capacity and drive identified individuals to the nearest testing location. Integrated with our testing locations.
6. Includes all licensing costs for workflow management, health assessment content scheduling, Covid-19 Dashboard (Domo) across all data/inventory/activity, chatbot support, website (modeled off of www.testutah.com), and integrate site hardware + QR Code and labeling for inventory and event (test) tracking. Each company will sign a BAA, is HIPAA compliant and will be party to umbrella agreement with agreed to terms & conditions (call center support available at additional cost as needed.)
7. Contractor will furnish:
 - a. All needed testing supplies, hardware, 4-10 Polymerase Chain Reaction (PCR) Machines, and 540,000 complete testing kits. Each complete collection test kit shall include transport media, nasopharyngeal swab, plastic biohazard bag, an adequate amount of extraction kit for each test, adequate amount of PCR enzymes to produce accurate test results, and all necessary consumables for complete tests results of COVID-19 based on the State's expected goal of 3,000 tests a day. The test kit provided will be Logix Smart™ Coronavirus 2019 (COVID-19) Test Kit. Such test kits must be capable of producing accurate results a majority of the time when properly conducted or administered.
 - b. Deliver 180,000 complete test kits to the State of Nebraska for use commencing on 4/24/2020 and for delivery of the initial 180,000 complete test kits to be completed in full by 5:00 p.m. on May 19, 2020.
 - c. Subsequently 90,000 complete test kits will be delivered each month thereafter until 540,000 testing kits are delivered. The initial 30,000 complete test kits will be delivered to the State of Nebraska by 5:00 p.m. on April 28, 2020.

- d. Automated extraction equipment and hardware compatible with extraction kits and all operational and coordination needs to setup in lab in Nebraska as determined/directed by State of Nebraska. This machine will be delivered, set-up, calibrated, and fully operational by 5:00 p.m. on April 28, 2020.
 - e. 4 PCR Machines will be will be delivered, set-up, calibrated, and fully operational by 5:00 p.m. on April 28, 2020. An additional quantity, with a maximum of 10 PCR machines, may be delivered at a mutually agreeable date.
 - f. Supplies of Personal Protective Equipment (PPE) for operations of six Mobile Testing locations.
 - i. First location PPE provided by 04/28/2020.
 - ii. First testing location to begin by 04/30/2020.
 - iii. Subsequent supplies of PPE for 6 future testing locations shall be provided 24-hours prior to new location operational as directed by State of Nebraska.
 - iv. Such PPE for each location shall be FDA or State of Nebraska approved, certified by an appropriate federal or state government agency, and include, at a minimum, face shields, N95 masks, disposable isolation gowns, and nitrile gloves.
 - g. Mobile Testing site layout and operations manual provided at execution of contract.
8. Contractor Management and Administration:
- a. Contractor shall provide all necessary project management, support, training and finance headcount for the project to be delivered remotely.
 - b. State of Nebraska requests for on-site work by Contractor will be reimbursed on a time and materials basis of a fully loaded rate of \$200 per work hour and reasonable travel expenses, as agreed upon in advance by State of Nebraska and Contractor.
 - c. Contract includes 32 hours of onsite work by contractor at no cost.
9. Technology, Testing, Training and setup:
- A. Contractor shall provide all training, testing and setup and any special requirements for specific knowledge transfer to support the State's successful implementation and use of the Deliverables, Application Services, or System(s). If the intent is for the State's personnel to become self-sufficient in operating or maintaining the solution, determine the type of training necessary, and develop a training plan, for such user self-sufficiency.
 - b. Contractor shall make reasonable efforts and ensure that all data received or produced pursuant to this Contract shall be compatible and able to integrate with the State's computer and technology systems for the purpose of COVID-19 activity and result reporting. Company will furnish FDA or State approved test media.

SECTION 3

Pricing

3.1 Fixed Fee Services

Technology Fee (12 month commitment)	
Workflow, Assessment, algorithms, Lab workflow, contact support center, scheduling	
Tech Fee	Per year
	\$6,000,000

Testing Supplies (This includes 3,000 tests a day for 180 Days)			
Number of tests	Total Cost	Optional - Additional 180 Days of Tests	
540,000	\$13,500,000	540,000	\$13,500,000

Set-up Fee (One-time Fee)	
Hardware Set up	\$250,000
High-output Extractor	\$275,000
Technology Set up	\$1,000,000
	\$1,525,000
Management Fee (12 month commitment) Covers all the supporting the delivery of the package of service	
	\$5,850,000
Total Cost	\$26,875,000

Summary of Fees	
Fee Due Upon Signature (To secure technology, equipment, and 6 months testing supply)	\$18,812,500
Fee Due @ 90 days	\$4,031,250
Fee Due @180 days	\$4,031,250
	Total \$26,875,000

Investment Value			
Total Workflow of Digital Assessment to Engage all Citizenry + 3,000 Tests Per Day for Qualified Participants			
State Population	1,934,000		
Total Investment	\$26,875,000		\$40,375,000
Assessment - Participation	967,000	<20%+ of Population with Average 2.5x Participation Rate and High Engagement	967,000
# of Tests	540,000	# of Tests - 6 Months	1,080,000
Blended Cost Per Test (Total Investment/# of PCR Tests)	\$49.77		\$37.38
Cost Per Citizen (Spread is 2x Testing Volume)	\$13.90		\$20.88
CMS Reimbursement Opportunity for State*			
Sample Collection (Swabs)	\$21		
Test	\$51		
Total	\$72		
	With 180 Days		With Full Year of Testing
Reimbursement Opportunity to State	\$39,047,400		\$78,094,800

* <https://www.cms.gov/files/document/mac-covid-19-test-pricing.pdf>

* <https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf>

* <https://www.fema.gov/news-release/2020/03/19/coronavirus-covid-19-pandemic-eligible-emergency-protective-measures>

SECTION 4

Project Managers

4.1 Project Manager - Contractor

Name

4.2 Project Manager - State of Nebraska

Doug Carlson

4.3 State of Nebraska – DAS/Procurement Contact:

Doug Carlson

SECTION 5

Additional Technology License Acceptance

Organizations listed below have executed Business Associate Agreement (BAA) to ensure the protection of Private Health Information (PHI) and the State agrees to accept each company's standard terms and conditions excluding pricing and invoicing to be handled by Nomi Health, except that in the event that any provision in either company's standard terms and conditions that conflict with Attachment A, Attachment A shall control.

Domo – Data Dashboard - <https://www.domo.com/company/saas-saas-service-terms>

Qualtrics – Workflow Engine - <https://www.qualtrics.com/terms-of-service/>



Order Form

Parties:	Qualtrics, LLC ("Qualtrics") State of Nebraska ("Customer")
Effective Date:	April 19, 2020
Governing Document:	<p>This Order Form is subject to the following (listed in order of precedence):</p> <ul style="list-style-type: none"> • This Order Form; • The Master Service Agreement (the "MSA") dated September 20, 2019, between Qualtrics and the State of Utah, and attached hereto as the MSA Exhibit. <p>The parties hereby ratify and incorporate by reference the MSA for purposes of this Order Form as though original parties thereto. Each reference to State of Utah in the MSA (pages 3 to 19) will be deemed to mean Customer for purposes hereof.</p>
Attachments:	<ul style="list-style-type: none"> - Fees Exhibit - Cloud Service Exhibit - Professional Services Exhibit - MSA Exhibit
Services:	As set forth in the exhibits attached hereto.
Term:	April 19, 2020 to April 18, 2021.
Payment Terms:	<p><u>Nomi Contract</u>. The State of Nebraska ("Customer") and Nomi Health Inc. ("Nomi") entered into a TestNebraska contract dated April 19, 2020 (the "Nomi Contract") for services, Services pursuant to this order shall be invoiced through Nomi.</p>
Additional Terms:	<p>Notwithstanding anything to the contrary set forth in the Agreement, any right of Customer to terminate without cause is only available without refund and on the condition that all fees set forth herein are paid in full. "Department of Technology Services" and "DTS" as referenced in the MSA will be deemed to mean the "Department of Administrative Services" and "DAS", respectively.</p> <p>TECHNOLOGY ACCESS STANDARDS: The Nebraska Technology Access Standards, found at http://nitc.nebraska.gov/standards/2-201.html, are included in the term "applicable requirements" for purposes of section 11.29 of the Agreement. Qualtrics shall provide standard support to Customer for configuration of surveys pursuant to section 11.29.</p> <p>CONTRACT CLOSEOUT: Upon contract closeout for any reason the Qualtrics shall within 30 days, unless stated otherwise herein: 1) Transfer all completed or partially completed non-proprietary deliverables to the State; 2) enable the return to the State all information and data, unless Qualtrics is permitted to keep the information or data by contract or rule of law. Qualtrics may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Qualtrics' routine back up procedures; 3) Return or vacate any state owned real or personal property; and, 4) enable the return all data in a mutually acceptable format and manner. Nothing in this Section should be construed to require Qualtrics to surrender intellectual property, real or personal property, or information or data owned by Qualtrics for which the State has no legal claim.</p> <p>In addition to the rights and obligations under section 6.5 of the Agreement and notwithstanding the prior additional term, Customer may request assistance from Qualtrics regarding the data retrieval in a mutually agreeable, readily accessible file format. Qualtrics undertakes to assist and contribute in all reasonable ways as may be necessary to enable the successful export of Customer Data from the Cloud Service, including assistance with understanding the structure, format and content of this data so that Customer can understand how such data should be used within any new system to be implemented. For the sake of clarity, Qualtrics shall not be required to assist with any migration of Customer Data onto any substitute solution or service. Nor shall Qualtrics be required to divulge any of its intellectual property or Confidential Information to any third party. The parties agree that Qualtrics is</p>



Order Form

entitled to be reimbursed by Customer, at the hourly rate agreed between the parties, for the work performed by Qualtrics pursuant to this additional term, as set forth in a mutually agreed to statement of work.

Qualtrics agrees to comply with the Nebraska Fair Employment Practice Act.

Qualtrics certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Qualtrics agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State of Nebraska's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the extent permitted by the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

Pursuant to Nebraska law, this contract is required to be posted online and is a public record subject to disclosure, unless specific information may be withheld from such disclosure pursuant to a lawful exception.

Qualtrics may charge Customer interest pursuant to the Nebraska Prompt Payment Act.

In no event shall any Data be stored or transmitted outside of the United States except as necessary to comply with Customer's instructions or as otherwise instructed by Customer (e.g. support purposes, use of subprocessor services).

Qualtrics and Customer shall each use good faith efforts to enter into a Business Associate Agreement.

Qualtrics agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State of Nebraska or any entity of the State of Nebraska. The State of Nebraska agrees that Qualtrics may issue a press release pertaining to the services under this order on the condition that any publicity releases pertaining to such services shall not be issued without prior written approval from the Customer.

To be completed by Customer

Regional Data Center:		Purchase Order Number (if any):	
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Order Form

Email Address for Invoice Submission:		Billing Address for Invoice Submission:	Attn:
Invoicing Instructions (if applicable):			

Qualtrics	Customer
DocuSigned by: By (signature): <i>Mark Creer</i>	DocuSigned by: By (signature): <i>Doug Carlson</i>
Name: Mark Creer	Name: Doug Carlson
Title: Managing Counsel	Title: Materiel Administrator
Date: April 23, 2020	Date: April 23, 2020
Qualtrics Primary Contact:	Customer Primary Contact:
Name: Nathan Walker	Name: Doug Carlson
Phone:	Phone: (402) 471-6500
Email: nathanw@qualtrics.com	Email: doug.carlson@nebraska.gov



Order Form Fees Exhibit

License Details

Start Date	End Date	Term in Months
19-Apr-2020	18-Apr-2021	12

Cloud Service Details

Year	Services	Price	Estimated Invoice Date	Payment Terms from Invoice	License Configuration
1	Cloud Professional	\$1,200,000.00 \$300,000.00	Effective Date	Net 30	Q-1260579
Total		USD \$1,500,000.00			

Prices shown do not include applicable taxes. Applicable taxes will be presented on the invoice.



Order Form

Cloud Service Exhibit

Cloud Service Renewal (not applicable to pilots or proofs of concept). Qualtrics sends renewal notices to customers at least 60 days before the end of the term. Upon expiration of each term, the Cloud Service may be renewed by mutual agreement of the parties, expressed in writing, for a successive one-year term with a price increase of no more than 5% at such renewal.

[Description of Services on following page]



Order Form

YEAR 1
Q-1258624

CLOUD SERVICE

CX Core Number of Responses: Unlimited
Developer Tools
Action Planning
Admin Users (Unlimited)
Advanced Question Types
Advanced Quotas
Advanced Security Management
Branded URL
CLFU (Case Management)
Custom Theme
CX ExpertReview - Response Quality (Advanced)
CX Journey Optimizer
XM Directory - State of the Art
ExpertReview - Compliance Assist
Offline App
Predict IQ
Professionally Developed Theme
Role-based Dashboards
Screen Out Reporting
SMS
Stats IQ (Describe and Relate)
Stats IQ (Pivot and Regression)
Text IQ
Vanity URL
Website Feedback
In-app addon for Website Feedback
Dashboard Users Includes up to 5



Order Form

Professional Service Exhibit

Customer agrees that Qualtrics may use partners to deliver any portion(s) of the Project at Qualtrics' discretion.

1. Definitions

- o "Deliverables" refers to those implementation deliverables included in the Project Scope in Section 2.
- o "Delivery Team" refers to the set of resources assigned by Qualtrics for fulfillment of project scope.
- o "Project" refers to the project that is the cumulation of Deliverables to be provided under this Professional Services Exhibit.
- o "Standard Business Hours" are 0900 to 1700 hours according to the time zone of the office in which Delivery Team is located, unless otherwise agreed to in writing during the Project.

2. Project Scope

- o Inclusions
 - i. Deliverable descriptions are outlined below. Please note that **only the Deliverables listed immediately below are included in this Project**. Each line item represents a Deliverable and quantity.
 1. Health Assessment
 2. Health Assessment dashboard
 3. CSAT Follow Up Survey
 4. Completion of Engineering efforts as defined below:
 - a. Follow up Assessment: Automation of the Opt in process and the distribution of assessment links in order to provide symptom updates
 - b. Login page creation on State site in order to obtain status of results and view progress
 - i. Health assessment respondents will need to create profile in order to track their status via self serve option
 - c. Appointment scheduler integration with partner in order to accommodate for testing sites
 - d. Test Kit Lifecycle Inventory Management System
 - i. System to track test kits from completion of assembly through results reporting
 5. Onboarding/Enablement of existing build to Customer
 - a. Enablement efforts will be coordinated by Delivery Team with Program Architect leading the efforts Delivery Team will coordinate all status update calls
 6. Daily batch export to Customer Data Warehouse
 - a. File dropped to customers SFTP to consume on a daily basis
 7. Transition to Designated Support Agent (DSA)
 - a. Please refer to Designated Support Agent Exhibit on page 5
- o Assumptions
 - i. Engineering efforts are not included and will require a separate change order
 - ii. For the duration of the Project, Customer will provide the Delivery Team with access to Customer's Qualtrics brand (account) as a brand administrator.
 - iii. The Project requires Customer to have Qualtrics API access enabled on Customer's account. Qualtrics API license is priced separately and not included herein.
 - iv. Customer authorizes Qualtrics to work in customer Brand ID until onboarding is completed.
 - v. Customer agrees to provide list of authorized employees to engage Provider. List authorizes designated resources with Brand ID access. All requests must be filtered through authorized employees
 - vi. Delivery Team and Customer will mutually agree to the list of specific browsers that should be tested as per Project requirements. Qualtrics' standard browser compatibility policy is specified in the "Browser Compatibility & Cookies" section of the Qualtrics support pages:
[\(https://www.qualtrics.com/support/survey-platform/getting-started/browser-cookies/\)](https://www.qualtrics.com/support/survey-platform/getting-started/browser-cookies/).

3. Responsibilities

- o Delivery Team Responsibilities
 - i. Engages with Customer throughout the Project, keeping the Customer informed of timelines and progress toward completion throughout the Project.
 - ii. Completes all items listed within Project Scope for each applicable Deliverable.
 - iii. Shares training resources as appropriate for each Deliverable, which may be in the form of live online training, online materials, and/or free online webinars.
 - iv. Offers guidance and support documentation required to ensure Customer can complete Onboarding and Enablement phase



Order Form

- v. For projects that involve a new license setup, provides initial configuration of license and Qualtrics account, including creation of up to 3 brand administrator users.
- vi. The purpose of the Project is to train Customer to be able to manage the program when the Project is complete. As such, the Delivery Team does not perform full setup and configuration of Qualtrics as a full-service implementation.
- vii. Completes all responsibilities outlined in Section 2.
- o Customer Responsibilities
 - i. Engages actively throughout the Project, following a cadence decided with Delivery Team during kickoff call; changes or cancellations of any meetings require 24 hours' notice in order to avoid forfeiture of allotted time.
 - ii. Manages User Acceptance Testing ("UAT") process and any special testing requirements, ensuring that each stage of the Project is complete and the scope of work has been met. This may include:
 - 1. Uploading sample data to the Qualtrics platform to test system functionality and license settings.
 - 2. Validating that scoped features and settings were implemented correctly and meet the requirements of the Project.
 - 3. Engaging other stakeholders within Customer's organization as needed to test technical or functional aspects of the Qualtrics platform.
 - iii. As needed, provides resources to fill all required roles for successful implementation, which may include project sponsorship, signatory, stakeholder management, project coordination, customer experience lead, technical lead, operational support.
 - iv. Completes all items listed under Customer Responsibilities in Schedule 1 for each applicable Deliverable.
 - v. Maintains all features included in the license after the implementation & Onboarding period, including any updates to Deliverables created during the Project, as well as the creation of any new Deliverables, including surveys and dashboards.
 - vi. For projects that involve a new license setup, provides required information for setup of brand administrator accounts; brand administrator users may create additional user accounts and manage access to the license, in accordance with any limitations specified in the license terms.
 - vii. Completes all steps listed under Customer Responsibilities in Section 2.

4. Governance

- o Delivery Team will coordinate with Customer to schedule a Project kickoff call, at which time the Project begins. Timing of kickoff call will be mutually agreed between Delivery Team and Customer based on Delivery Team availability and Customer's milestones. It is estimated that the portion of the Project above described will last for 8 week(s).
 - i. Creation of survey: April 30, 2020
 - ii. Scheduling functionality: April 30, 2020
 - iii. Bar code scanning functionality: April 30, 2020
- o The Project is complete based on completion of delivery and Customer's acceptance, per the terms of the mutually agreed upon delivery schedule.
- o Unless otherwise agreed by both parties in writing, all interactions and meetings will be conducted in English, and will be conducted remotely, via phone, email, or video conference.

5. Acceptance Criteria

- o Once a Project phase is completed and the Delivery Team provides notification of the Deliverables for review and approval, the Customer will either (1) confirm the requirements have reasonably been met and sign off on the approval for the next implementation phase to begin or (2) reply to the Delivery Team, in writing, detailing the specific requirements that must still be met. Upon mutual agreement, both parties may agree to extend the time period for UAT, though additional time may impact Project timelines and budget and be subject to a Change Order (as defined below).
- o Deliverables are reviewed and signed off according to the following process:
 - i. Delivery Team will submit final drafts for review and sign-off at least 5 business days prior to the Deliverable completion date.
 - ii. Customer will sign off or report any issues within 5 business days of draft submission.
 - iii. The Delivery Team will correct reported issues within a mutually agreed time frame.
 - iv. Customer will provide written feedback and raise issues related to the reworked portion of the Deliverable within a mutually agreed time frame, and the Delivery Team will make changes necessary to resolve the issues.
 - v. Customer will provide final review and signoff on the reworked Deliverables within 5 business days.



Order Form

- vi. Deliverables will be considered accepted if the Customer does not provide written notification of Deliverable rejection within the timelines specified above.

6. Third Party Vendors and Products

- o Customer remains responsible for their own vendors and third parties providing services related hereto.
- o Qualtrics is not responsible for third party products obtained by Customer.

7. Change Orders

- o If Customer or Delivery Team wishes to change the scope of the Project, they will submit details of the requested change to the other in writing. Delivery Team will, within a reasonable time after such request is received, provide a written estimate to Customer of changes to Project cost, timeline, and/or scope.
- o Promptly after receipt of the written estimate, Customer and Delivery Team will negotiate and agree in writing on the terms of such change (a "Change Order"). Each Change Order complying with this Section will be considered an amendment to this Service Order.

8. Annual Hosting and Maintenance

- o Qualtrics will provide support for any customizations that the Delivery Team has developed. This includes:
 - i. Costs for hardware and software necessary to operate the customizations together with the Services.
 - ii. Maintaining compatibility with the standard functionality as implemented by Customer.
 - iii. The custom capabilities integrate with Qualtrics' core software products but are separate.
 - iv. The Professional Services Support ensures ongoing compatibility with the evolving core products.
 - v. Qualtrics will provide maintenance and fix issues if the original functionality becomes inoperable within the licensing period for Qualtrics and within one year of the most recent annual hosting and maintenance renewal.
 - vi. Customer support and troubleshooting issues related specifically to the custom developed solution.
 - vii. Any and all updates or revisions that are needed for security purposes.
 - viii. Continuous monitoring and alerting of critical system functionality on a 24/7 basis.
 - ix. Management and execution of required migrations, deprecations, and upgrades.

9. Designated Support Agent (DSA) Services Exhibit

The Qualtrics Designated Support Agent will fulfill the following:

Term: up to 4 months from date of execution

Fees: No charge for term

- o Be available during regular business hours: 8am - 5pm MT (excluding weekends and holidays)
 - i. The DSA is an upgraded support experience who will provide a single point of contact support within the working hours. Outside of these hours, Customer requests will be handled by the Qualtrics 24/7 general support team. The general support team will be able to address most issues, and/or escalate any issues requiring extra attention. The DSA will be looped in on any issues that arise outside of business hours.
- o Be the primary point of contact for up to 10 program administrators designated by Customer to Qualtrics. Program inquiries from other Customer users (non administrators) should be routed to the designated program administrators who should, in turn, work with the DSA. General support inquiries from Customer users (administrators and non-administrators) should be directed to the Qualtrics general support team.
- o Be acquainted with the professional and engineering services work and customizations associated with Customer's program. Troubleshooting and resolution of custom work will be performed by the professional and engineering services teams, respectively.
- o Agent support is subject to the following limits:
 - i. Agent will not provide support regarding program design, methodology or execution.
 - ii. Agent will not provide support for survey respondents.
 - iii. Agent will not do any new technical builds on behalf of the customer, including surveys, dashboards, distributions, etc. but will instruct, advise, and review as needed.
 - iv. Agent will not provide support for custom code work performed by third parties.

Customer hereby permits the DSA and, where applicable, Qualtrics Customer Success and Qualtrics general support teams, to access Customer's Qualtrics accounts as necessary to provide the services and support related hereto to Customer, which access may include accessing and downloading Customer Data to the extent necessary to perform the offering set forth herein.



Order Form

10. Payments and Fees

Item(s)	Invoice Date	Price (USD)
CX Implementation	Date Signed	\$250,000
Designated Support Agent	Date Signed	\$50,000
Total:		\$300,000
Annual Hosting and Maintenance*	Beginning of Year 2	\$0

*All fees are one time except Annual Hosting and Maintenance, which will be renewed yearly provided the functionality is in use.

11. Terms and Conditions

The terms and conditions of this Order shall take precedence over the MSA. Section 5 of the MSA shall be stricken and replaced with the following for this scope of work only:

Section 5 Customer Data

Section 5.1 General. As between the Parties, Customer owns all right, title and interest in and to all survey responses, reports, and any other information input or generated on behalf of Customer in connection with the Services ("Data"). Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, classification, and intellectual property right to use Data and shall obtain and maintain all consents necessary for using and processing the Data in accordance herewith. Data shall be deemed to be Customer's Confidential Information (as defined below), and Qualtrics shall not use Data for any purpose other than performing its obligations hereunder or as otherwise agreed to in writing by the Parties. Anonymized and aggregated data ("Usage Data") for this scope of work shall not be used for Qualtrics' business purposes.



Order Form

MSA Exhibit

[see attached]

Master Services Agreement



Contract # MA3289

STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Division of Purchasing and the following Contractor:

Qualtrics, LLC			LEGAL STATUS OF CONTRACTOR
_____	Name		<input type="checkbox"/> Sole Proprietor
333 W. River Park Dr.	Address		<input type="checkbox"/> Non-Profit Corporation
_____			<input checked="" type="checkbox"/> For-Profit Corporation
Provo	UT	84604	<input type="checkbox"/> Partnership
City	State	Zip	<input type="checkbox"/> Government Agency

Contact Person Chase Winder Phone # 801-243-9028 Email cwinder@qualtrics.com
Vendor #VC0000186463 Commodity Code 43230, #81110, #81112, 20821

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: Experience Management Software as a Service (SaaS) for the State of Utah.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on BidRS19041. The Department of Technology Services will facilitate purchases under this contract.
4. CONTRACT PERIOD: Effective Date: September 20, 2019 Termination Date: September 19, 2022 unless terminated early or extended in accordance with Section 6 of this Agreement. Renewal options (if any): See Section 6.1 of this Agreement.
5. Administrative Fee: 0.10% or 1/10 of 1% of the Fees paid by Eligible Users under the applicable Report as set forth in Section 11.31 of the Agreement.

[State of Utah internal: Executive Branch Agency purchases must be authorized by DTS prior to purchasing. For authorization, either purchase through DTS by placing a purchase request through ServiceNow or request an exception through ServiceNow by clicking here. Any questions, please ask the IT Director assigned to your agency.]

6. ATTACHMENT A: Mutually-agreed Master Services Agreement for Goods Services and IT

████████████████████
████████████████████

EXHIBIT A: Insurance Coverage

EXHIBIT B: Service Level Agreement/Incident Response

7. Each signatory below represents that he or she has the requisite authority to enter into this contract.

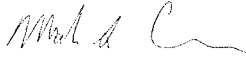
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Master Services Agreement

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR (QUALTRICS, LLC)

STATE



Sep 20, 2019



Sep 20, 2019

Contractor's signature

Date

Director, Division of Purchasing

Date

Mark Creer

Managing Counsel

Type or Print Name and Title

Rick Straw	(801) 538 3166	NA	rstraw@utah.gov
Division of Purchasing Contact Person	Telephone Number	Fax Number	Email

[Remainder of page left intentionally blank.]

This Master Services Agreement (this "**Agreement**") is effective as of **September 20, 2019** (the "**Effective Date**"), by and between Qualtrics, LLC ("**Qualtrics**" or "**Contractor**") and **the State of Utah** ("**Customer**," and each of Qualtrics and Customer, a "**Party**," and collectively, the "**Parties**"). This Agreement is a framework document to establish a Services-based relationship between the Parties.

Definitions

A. Capitalized terms used in this Agreement are defined in line with the text, or as included below in this Section A.

1. "Contractor" means Qualtrics, including its agents, officers, employees, partners, and/or any other person or entity for which Qualtrics may be liable under federal, state, or local laws.
2. "Division" means the State of Utah Division of Purchasing.
3. "DTS" means the State of Utah Department of Technology Services.
4. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract. Any Eligible User desiring to purchase Services (defined below) under this Agreement shall enter into an Order (defined below) referring to this Agreement.

Recitals

A. Under this Agreement, Customer may order and Qualtrics may provide two types of services (together, "**Services**"):

1. **Subscription Services**, which are the series of proprietary computer software programs developed by Qualtrics as delivered to Customer that facilitate and automate the process of conducting surveys, polls, intercepts, and reports ("**Software**"), products and related systems, security, updates and improvements thereto, and support services accessed by Customer using a web browser and the Internet. Subscription Services are specified in a service order ("**Service Order**") and are purchased on an annual or multi-year basis as set forth in a Service Order.

2. **Professional Services**, which are Services other than Subscription Services that Qualtrics performs or provides, including the development and delivery of certain deliverables ("**Deliverables**"), specified in a statement of work ("**SOW**," and each Service Order, SOW or other ordering document, an "**Order**"). Professional Services are purchased on a project basis.

B. Each Order will reference this Agreement and will be subject to the terms hereof.

C. Customer desires to use the Services set forth in an Order, and Qualtrics desires to provide such Services to Customer, pursuant to the terms and conditions of this Agreement.

Agreement

In consideration of the mutual promises set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, Qualtrics and Customer agree as follows:

SECTION 1 LICENSE OF SUBSCRIPTION SERVICES AND RESTRICTIONS

Section 1.1 License; Contacts. Effective upon the Parties' execution of an applicable Order, Qualtrics hereby grants to Customer a limited, non-exclusive, non-transferable (except pursuant to the Assignment section below), revocable, worldwide license to use the Subscription Services and the Deliverables, each as

applicable, for Customer's internal business purposes, including responses by external respondents, during the term set forth in the applicable Order. Customer is responsible for creating and maintaining user accounts and all use of its license, and for ensuring that those accounts are protected with passwords to prevent unauthorized use. Each Party shall appoint a contact person for each Order, as specified in such Order, who will be the other Party's principal contact to resolve issues related to the applicable Services. Either Party may change its contact person by providing notice thereof to the other Party. Customer shall designate one person to be responsible for administering its account and all its users (such person, the "**Brand Administrator**").

Section 1.2 Restrictions. Notwithstanding anything herein to the contrary, Customer shall not: (a) sell, resell, rent, or lease the Subscription Services; (b) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit or violates this Agreement or an Order; (c) access or use any of Qualtrics' intellectual property except as provided herein; (d) permit third parties to use the Subscription Services without Qualtrics' prior consent (except that Customer may allow third parties to use the Subscription Services if such third parties are providing services to Customer (but not for such third parties' own use) and such third party is not a direct competitor of Qualtrics as can be reasonably determined); (e) tamper with the security of the Software or reverse engineer, interfere with, or disrupt the integrity or performance of the Services; (f) perform vulnerability tests, network scans, penetration tests, or other investigative techniques on Qualtrics' software or services; (g) if Customer is an academic institution purchasing an academic license, permit use of the Services by individuals other than students, staff, or faculty of Customer, or use the Services for other than academic or research purposes (e.g., Customer shall not use the Services for commercial purposes, including on behalf of other entities for compensation); (h) use the Services in violation of applicable law; or (i) use the Services to (1) send irrelevant or inappropriate messages to third parties (e.g., "spam"), (2) upload, send, or store malicious code, including software or content that condones, contains, or links to warez, cracks, hacks, their associated utilities, or other piracy-related information, whether for educational purposes or not, (3) collect sensitive personal information, (4) upload binary files or executable code, or (5) upload content that (A) infringes, misappropriates, or otherwise violates any third party's intellectual property right, (B) aggravates, harasses, threatens, defames, or abuses Qualtrics or third parties (including content that is racist or otherwise extremely offensive to others), (C) contains or contains links to nudity, pornography, obscene content, sex, profanity, or foul language (except in pursuit of valid research purposes), (D) exploits images of children under 18 years of age, or (E) contains links to third-party services.

Section 1.3 Qualtrics, in its sole discretion, may restrict access to Customer's account after providing notice to Customer of unauthorized access or use and allowing Customer a reasonable period to cure such unauthorized access or use.

Section 1.4 Insurance. Qualtrics shall maintain in effect during the Term the minimum insurance coverage outlined in **Exhibit A** attached hereto.

SECTION 2 SUPPORT AND MAINTENANCE

Section 2.1 During the term of the applicable Order (the "**Order Term**") and on the condition that Customer has paid all undisputed fees due and owing to Qualtrics and is otherwise in material compliance with the terms of this Agreement, Qualtrics shall provide the support and maintenance services to Customer set forth in Section 2.2.

Section 2.2 Technical Support. Qualtrics shall respond to technical support requests via phone and email 24 hours a day, 7 days a week, excluding major international holidays, and make reasonable, good faith efforts to correct errors as outlined in **Exhibit B**. Customer shall provide Qualtrics with information as Qualtrics reasonably requests to enable Qualtrics to verify and reproduce the reported error. Certain Qualtrics employees may need to access Data to provide the Services. Customer hereby consents to such access where necessary to provide the Services, which access may include downloading a copy of Data for so

long as necessary and thereafter deleting such copy. Online support materials for the Subscription Services (“**Online Information**”) are included with the Subscription Services and are available at www.qualtrics.com/support.

SECTION 3 FEES. During an Order Term, Customer shall pay Qualtrics the fees and charges specified on the applicable Order. Customer is responsible for all applicable taxes on the fees and charges paid by Customer, including any and all sales, use, and value-added taxes, but not any taxes imposed on Qualtrics income. Fees for Services shown on an Order do not include any applicable sales, use, or value-added taxes. Customer is responsible for paying any fees for exceeding the quantity limits set forth in an Order.

SECTION 4 OWNERSHIP OF INTELLECTUAL PROPERTY. As between the Parties, Qualtrics exclusively owns all right, title, and interest in and to the Software, the Deliverables (which, for the avoidance of doubt, do not include Data (as defined below)) and any Services-related suggestions, ideas, enhancements, requests, feedback, and recommendations provided by Customer to Qualtrics during the Term. Any transaction contemplated hereby or by any Order is not a sale and does not convey to Customer any rights of ownership in or related to the Services or the Deliverables, or intellectual property rights of Qualtrics. Qualtrics’ logo and the product names associated with the Services are trademarks of Qualtrics (or its licensors, where applicable) and no right or license is granted to Customer to use them.

SECTION 5 CUSTOMER DATA

Section 5.1 General. As between the Parties, Customer owns all right, title and interest in and to all survey responses, reports, and any other information input or generated on behalf of Customer in connection with the Services (“**Data**”). Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, classification, and intellectual property right to use Data and shall obtain and maintain all consents necessary for using and processing the Data in accordance herewith. Data shall be deemed to be Customer’s Confidential Information (as defined below), and Qualtrics shall not use Data for any purpose other than performing its obligations hereunder or as otherwise agreed to in writing by the Parties. Notwithstanding the foregoing, Customer hereby grants to Qualtrics a non-exclusive, worldwide, royalty-free, fully paid up, sublicensable (directly and indirectly), transferrable, perpetual, and irrevocable license to anonymize and aggregate the Data and use such anonymized and aggregated data (“**Usage Data**”) for Qualtrics’ business purposes. Qualtrics shall own all right, title, and interest in Usage Data. Usage Data will not include personally identifiable information and will only be used on an aggregated basis with similarly anonymized data of other Qualtrics customers. Usage Data shall not be considered Confidential Information of Customer.

Section 5.2 Data Security. Qualtrics shall maintain appropriate technical and organizational security measures to protect Data against: (a) accidental destruction, loss, and alteration; and (b) unauthorized disclosure of, or access to, Data transmitted, stored or otherwise processed as set forth herein. Qualtrics uses secure hosting facilities that are independently audited using the SSAE-18 methodologies. Qualtrics shall comply with applicable data processing laws relating to the processing, transmission, and disclosure of Data.

Section 5.3 Incidents. Either Party shall, without undue delay after discovery thereof, notify the other Party of: (a) any loss, unauthorized disclosure, or unauthorized use of Data; or (b) any access, acquisition or misappropriation of Data by third parties; or (c) any other disclosure of Data in violation of this Agreement (collectively, “**Security Breach**” or “**Data Breach**” as used in Section 5.4)). In the event of a Security Breach, each Party shall take such steps as are necessary to: (1) promptly mitigate the effects of such Security Breach and prevent a recurrence thereof; and (2) comply with applicable laws relating to such Security Breach.

Section 5.4 Data Breach (Security Breach) Responsibilities. This Section 5.4 only applies when a Data Breach/Security Breach occurs Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification. In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the applicable Eligible User by reasonably sharing information

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relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) provide a root cause report for the Data Breach to the applicable Eligible User; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any third-party claims, damages, or other harm related to a Data Breach due to Qualtrics' breach of this Agreement that results in the unauthorized use or disclosure of Data. If the Data Breach requires public notification by applicable law, all communication naming an Eligible User shall be coordinated with such Eligible User. Contractor shall be responsible for all notification and remedial costs and damages required by law for a Data Breach due to Qualtrics' breach of this Agreement.

Section 5.5 Data Transfer. Qualtrics is strictly a data processor, not a data controller, for the processing of the Data in order to provide the Services. Subscription Services are self-service ("do-it-yourself") products in which only Customer determines what data to collect, from whom, from where, for what purpose, and when to delete it. Qualtrics shall (a) store and process all Data in a single geographical region as specified on an Order and (b) not transfer Data out of that region. Qualtrics is responsible for the daily backup of Data for disaster recovery purposes only and the deletion of such backups. Customer is responsible for routine backup and deletion of Data.

SECTION 6 TERM AND TERMINATION

Section 6.1 Term. The term of this Agreement ("Term") commences on the Effective Date and continues for three years and will automatically renew for two additional one-year periods unless earlier terminated as provided below or until a Party provides notice of non-renewal at least 30 days prior to expiration of the then-current period. Each Order still in effect as of the expiration of this Agreement will remain in effect after such expiration, subject to the terms and conditions of this Agreement, until the expiration or termination of such Order.

Section 6.2 Termination. Either Party may immediately terminate this Agreement or any Order for cause upon notice if the other Party: (a) materially breaches this Agreement and such breach is not cured within 30 days after the breaching Party receives notice thereof from the other Party; or (b) becomes insolvent, acknowledges insolvency in any manner, ceases to do business, makes an assignment for the benefit of its creditors, or files a petition in bankruptcy.

Section 6.3 Termination of Professional Services. Except as otherwise specified, obligations for Professional Services expire automatically upon (a) fulfillment of the last milestone as stated in the applicable Order; (b) the termination of the applicable Order in accordance with the terms thereof; or (c) the termination or expiration of Customer's Subscription Services. If custom functionality developed under an Order, in whole or in part, becomes available as part of a standard Qualtrics product or paid features maintained by Qualtrics, then, at no additional cost to Customer, (1) Qualtrics may migrate Customer to use such functionality or feature on the standard Qualtrics product, and (2) Qualtrics is not required to maintain that custom functionality under such Order.

Section 6.4 Effect of Termination. Following any termination of this Agreement or an Order, Qualtrics shall discontinue providing the applicable Services, and Customer shall cease using such Services. Within 30 days after the end of the Term or termination of this Agreement or an Order, (a) Customer shall pay to Qualtrics all outstanding undisputed fees payable as of the effective date of termination, and (b) Qualtrics shall refund any pro-rated unused fees prepaid by Customer if Customer terminates this Agreement for cause or pursuant to a Force Majeure Event (defined below). If this Agreement is terminated for cause, each Order in effect will also terminate.

Section 6.5 Customer Right to Access Data After Termination. Upon the termination of all Subscription Services, Qualtrics shall make available to Customer a portal whereby Customer may download and delete Data for a period of 30 days. Qualtrics is not required to retain Data after such 30-day period has ended.

SECTION 7 REPRESENTATIONS AND WARRANTIES

Section 7.1 Mutual. Each Party represents and warrants to the other Party that:

- (a) it has the power and authority to enter into this Agreement and perform its obligations hereunder, and such performance will not breach any separate agreement by which it is bound; and
- (b) it will comply with applicable laws, rules, and regulations, including applicable data privacy laws (in Qualtrics' case, as a data processor, and in Customer's case, as a data controller).

Section 7.2 Qualtrics. Qualtrics warrants to Customer that:

- (a) it will use commercially reasonable efforts to ensure that Software and any updates to the Software will not introduce any malicious code that could disrupt any software or system used by Customer in connection with the Subscription Services;
- (b) it will implement appropriate technical and organizational security measures designed to protect Data against theft, unauthorized access, copying, and distribution;
- (c) the Subscription Services will materially comply with the Online Information; and
- (d) it will abide by all principles in the Qualtrics Security White Paper (<http://www.qualtrics.com/docs/QualtricsSecurityWhitepaper.pdf>), the URL for which will remain active throughout the Term, and which will only be updated as required to reflect improved security and operational procedures.

Section 7.3 Infringement.

- (a) Qualtrics represents and warrants that the Software and any Deliverables do not infringe any third party's intellectual property rights, except to the extent such infringement results from (1) content uploaded to or collected into the Software by Customer or a third party acting under Customer's license, (2) Qualtrics' compliance with instructions or specifications provided by Customer, or (3) the combination of the Software or any Deliverables with other content, services, or products not supplied by Qualtrics.
- (b) Except with respect to indemnification for third-party claims as set forth in Section 10, as Customer's sole remedy and Qualtrics' sole liability for Qualtrics' breach of Section 7.3(a), Qualtrics shall, at its option and sole cost and expense: (1) obtain the right for Customer to continue to use the Software or Deliverables as licensed by this Agreement; (2) modify or replace the Software or Deliverables, in whole or in part, to seek to make the Software or Deliverables (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Software or Deliverables under this Agreement; or (3) if in Qualtrics' discretion the options set forth in clauses (1) and (2) are not commercially reasonable, by notice to Customer, terminate this Agreement and any applicable Orders with respect to all or part of the Services, and require Customer to immediately cease any use of the Services or any specified part or feature thereof, in which case Qualtrics shall refund to Customer a prorated portion of Customer's prepaid unused fees for the discontinued features of the Services.

Section 7.4 Limitation of Warranties. EXCEPT AS SET FORTH IN THIS SECTION 7, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, AND MERCHANTABILITY, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7 AND EXHIBIT B, ALL SERVICES PROVIDED BY QUALTRICS HEREUNDER ARE STRICTLY ON AN "AS IS"

BASIS, AND QUALTRICS DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS, OR COVENANTS WITH RESPECT TO ANY THIRD-PARTY CONTENT OR PRODUCTS, EXPRESS OR IMPLIED.

SECTION 8 CONFIDENTIAL INFORMATION

Section 8.1 Definitions. As used herein, “**Recipient**” means the Party receiving Confidential Information from the other Party; “**Discloser**” means the Party providing Confidential Information to the other Party; and “**Confidential Information**” means each Order, the Services, Data, this Agreement, and any other information, written or oral, that should reasonably be expected by the Recipient to be confidential. Confidential Information does not include information which (a) becomes generally available to the public in any manner or form through no fault of Recipient or its employees, agents or representatives, but only from the date that it becomes so available, (b) was rightfully in possession of Recipient without obligation of confidentiality prior to receipt thereof from Discloser, (c) is independently developed by Recipient without benefit of any Confidential Information, (d) is rightfully received by Recipient from another source on a non-confidential basis, or (e) is released for disclosure with Discloser’s prior written consent.

Section 8.2 Use and Disclosure. Recipient shall keep the Confidential Information of Discloser confidential and not disclose to any person or use for any purpose, except as expressly permitted by this Agreement, any Confidential Information of Discloser, except that Recipient may disclose Confidential Information to those employees, independent contractors, and advisors who have a need to know such information for Recipient to perform its obligations or exercise its rights hereunder, and who are bound to keep such information confidential. Recipient shall give Discloser’s Confidential Information at least the same level of protection as Recipient gives its own Confidential Information of similar nature, but not less than a reasonable level of protection.

Section 8.3 PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that an Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Agreement, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Agreement. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Agreement, unless prior written consent has been obtained in advance from the Eligible User.

Section 8.4 Upon written request from Discloser and subject to any legal obligation to preserve Confidential Information (e.g., litigation hold), Recipient shall promptly return or destroy all Confidential Information (other than Data), except that Recipient is not required to return or destroy copies of any electronic records or files containing the Confidential Information that have been created pursuant to automatic archiving or back-up procedures and that would be unreasonably burdensome to return or destroy. Recipient may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, on the condition that the Recipient, (a) to the extent permitted by law, gives the Discloser reasonable notice to allow the Discloser to seek a protective order or other appropriate remedy, (b) discloses only such information as is required by the governmental entity or otherwise required by law, and (c) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

Section 8.5 Injunctive Relief. Because money damages may not be a sufficient remedy for any breach of the obligations in this Section 8, Discloser is entitled to seek specific injunctive relief as a remedy for any such breach.

SECTION 9 LIMITATION OF LIABILITY

Section 9.1 WAIVER OF SPECIFIED DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF BUSINESS, DATA, REVENUE, PROFITS, INFORMATION, USE, DIMINUTION IN VALUE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICES OR THIS AGREEMENT, INCLUDING THE USE OR INABILITY TO USE THE SERVICES, ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, AND ANY INTERRUPTION, INACCURACY, ERRORS, OR OMISSIONS, EVEN IF A PARTY HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SECTION 9.2 LIABILITY CAP. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY RELATED TO THE SUBJECT MATTER HEREOF SHALL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO QUALTRICS UNDER THE APPLICABLE ORDER IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

SECTION 9.3 EXCLUSIONS. THE LIMITATIONS OF LIABILITY IN SECTION 9.1 AND SECTION 9.2 DO NOT APPLY TO SECTION 10 (INDEMNIFICATION) OR ANY FEES PAYABLE HEREUNDER, AND THE LIMITATION OF LIABILITY IN SECTION 9.1 DOES NOT APPLY TO BREACHES OF SECTION 5 (CUSTOMER DATA) AND SECTION 8 (CONFIDENTIAL INFORMATION). EACH PARTY SHALL USE REASONABLE EFFORTS TO MITIGATE ANY POTENTIAL DAMAGES OR OTHER ADVERSE CONSEQUENCES AFFECTING SUCH PARTY THAT ARISE FROM OR RELATE TO THE SERVICES.

SECTION 10 INDEMNIFICATION. Each Party (the “**Indemnifying Party**”) shall indemnify and hold harmless the other Party (the “**Indemnified Party**”), and if applicable, its licensors and affiliates and each of their officers, directors, and employees from and against any and all costs, damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and costs) incurred as a result of third-party claims to the extent arising out of or in connection with infringement or alleged infringement of any third party’s intellectual property right due to the Indemnifying Party’s actions or inactions. The Indemnified Party shall: (a) promptly give notice of the claim to the Indemnifying Party; (b) give the Indemnifying Party sole control of the defense and settlement of the claim; (c) provide to the Indemnifying Party all available information and assistance; and (d) not compromise or settle such claim. Notwithstanding the foregoing, the Indemnifying Party is in no way obligated to the Indemnified Party or any third party under this Section to the extent that a claim is based upon any one of the following: (i) content uploaded to or collected into, or modification of, the Services by a party other than the Indemnifying Party; (ii) the Indemnifying Party’s compliance with instructions or specifications provided by the Indemnified Party; or (iii) the combination of content, services or products with other content, services or products not supplied by the Indemnifying Party.

SECTION 11 GENERAL

Section 11.1 Choice of Law and Jurisdiction. This Agreement, any Order, and all claims arising out of or related thereto will be governed by the laws of the United States of America and the State of Delaware, without reference to rules governing choice of law. Except for the right of either party to apply to any court for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any dispute that arises between the Parties concerning this Agreement or any Order, forum and venue will be laid exclusively in the state and federal courts located nearest to Salt Lake City, Utah, and such courts shall have exclusive jurisdiction over any dispute concerning this Agreement or any Order. The Parties hereby consent to the personal jurisdiction of such courts and expressly waive all defenses of lack of personal jurisdiction and forum non-conveniens and agree that process may be served on either Party in a manner authorized by applicable law or court rule. The Parties hereby expressly disclaim the application of the Uniform Computer Information Transaction Act and the United Nations Convention on the International Sale of Goods to this Agreement or any Order.

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Section 11.2 Force Majeure. Neither Party will be liable for any delays in, or failures of, performance under this Agreement or any Order, except for payments, to the extent that performance of such Party's obligations or attempts to cure any breach under this Agreement or any Order are delayed or prevented as a result of any event or circumstance beyond the reasonable control of such Party ("**Force Majeure Event**"), except that the other Party may terminate this Agreement or any affected Order upon 30 days' notice if the circumstances causing non-performance can reasonably be expected to continue for more than one calendar month.

Section 11.3 Entire Agreement; Amendment; Counterparts. This Agreement, the attached Exhibits, and each Order executed hereunder, constitute the entire agreement between the Parties concerning the subject matter hereof and thereof and supersede all written or oral prior agreements or understandings with respect thereto, including any proposals, price quotes, click-wrap agreements, purchase order terms and conditions or non-disclosure agreements. All Exhibits and Orders are hereby incorporated into this Agreement as if set forth herein in full. If the terms of this Agreement conflict with the terms of any Exhibit, Order, or other document binding and applicable to the Parties, the terms of this Agreement control unless expressly stated otherwise. This Agreement, the attached Exhibits, and each Order may not be amended except in writing signed by authorized representatives of both Parties. This Agreement or any Order may be executed by the Parties electronically and in counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

Section 11.4 Language. This Agreement, the attached Exhibits, and each Order have been prepared and written in English. Any non-English translation thereof is provided for convenience only and is not valid or legally binding.

Section 11.5 Construction. The Parties intend this Agreement and each Order to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Unless the context requires otherwise, as used herein, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation," (b) the word "or" is not exclusive, and (c) the words "herein," "hereof," "hereto," "hereunder," and similar words refer to this Agreement as a whole.

Section 11.6 Severability. If any one or more of the provisions of this Agreement or any Order is held invalid, illegal, or unenforceable, such invalid, illegal, or unenforceable provision will be modified, if possible, to the minimum extent necessary to make it valid and enforceable, or if it cannot be so modified, then severed, and the remaining provisions contained herein or therein will not in any way be affected or impaired.

Section 11.7 Waiver. Neither Party's failure to enforce strict performance of any provision of this Agreement or any Order will constitute a waiver of a right to subsequently enforce such a provision. No modification, extension, or waiver of this Agreement or any Order will be valid unless made in writing and signed by an authorized representative of the Party to be charged. No written waiver will constitute, or be construed as, a waiver of any other obligation or condition of this Agreement or any Order.

Section 11.8 Assignment. Neither Party may assign this Agreement or any Order, by operation of law or otherwise, without the prior written consent (not to be unreasonably withheld or delayed) of the other Party, except that either Party may assign this Agreement without consent to (a) an affiliate of such Party or (b) its successor in a merger, acquisition, or other change of control, including the sale of all or substantially all of its assets, stock, or business to which this Agreement or the applicable Order relates, in each case on the condition that the assignee is not a direct competitor of the non-assigning Party. Qualtrics may use subcontractors to perform certain portions of the Services, but Qualtrics remains responsible for any subcontractor's performance hereunder.

Section 11.9 No Agency. Neither this Agreement nor any Order will be construed to create an agency, franchise, representative, joint venture, employment relationship, or partnership between the

Parties. The Parties are and remain independent contractors. Neither Party has the authority to bind the other or to incur any liability or otherwise act on behalf of the other.

Section 11.10 Survival. Each Party's obligation under Section 6.4, Section 7.4, Section 8, Section 9, Section 10, and Section 11 will survive the Term or termination of this Agreement for a period of two years, except that Qualtrics' obligations related to the storage and protection of Data will continue perpetually with respect to any Data that has not been permanently destroyed within its Service.

Section 11.11 Cumulative Remedies. Except as expressly set forth herein or in any Order, the rights and remedies provided hereunder are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, in equity or otherwise.

Section 11.12 Notices. Each Party shall cause all notices it delivers to the other Party hereunder and under each Order to be in writing and sent (a) by a delivery service with provisions for a receipt, to the physical address listed on the signature page hereto; or (b) by email to *notice@qualtrics.com* for notices going to Qualtrics, or to the email address listed for Customer in the applicable Order for notices going to Customer. Except as otherwise provided herein, any notice or other communication is effective only (1) upon receipt (or rejection) by the receiving Party and (2) if the Party giving notice has complied with the requirements of this Section.

Section 11.13 No Third-Party Beneficiaries. Except as otherwise set forth herein, this Agreement is for the sole benefit of the Parties and their permitted successors and assigns, and nothing herein is intended to or should confer upon any other individual or entity any legal or equitable right, benefit, or remedy of any nature whatsoever.

Section 11.14 Export Controls. Qualtrics provides services and uses software and technology that may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit access to or use of any Service in a U.S. embargoed country or in violation of any U.S. export law or regulation.

Section 11.15 Conflict of Interest. Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.

Section 11.16 Conflict of Interest with State Employees. Contractor agrees to comply and cooperate in good faith with all conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended, applicable to the operation of its business.

Section 11.17 Drug-free Workplace. Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.

Section 11.18 Code of Conduct. If Contractor is working onsite at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct which will be provided upon request by Contractor to the Eligible User. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision working onsite receives a copy of such code of conduct.

Section 11.19 No Waiver of Sovereign Immunity. In no event shall this Agreement be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

Section 11.20 Records Administration. Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Agreement. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, Customer auditors, federal auditors, Eligible Users or any firm identified by the Division, remote access to all such records upon written request. Contractor

must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.

Section 11.21 Certify Registration and Use of Employment "Status Verification System". This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.

(1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.

(2) Contractor's failure to comply with this section will be considered a material breach of this Agreement.

(3) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

Section 11.22 Employment Practices. Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.

Section 11.23 Debarment. Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.

Section 11.24 Nonappropriation of Funds, Reduction of Funds, or Changes in Law.

(a) Only after the first year of each Order and thereafter only on the anniversary of the effective date specified in such Order, upon thirty (30) days written notice delivered to the Contractor, such Order may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Agreement; or (ii) that a change in available funds affects an Eligible User's ability to pay under such Order. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

(b) If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Services properly ordered until the effective date of said notice and without refund. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

Section 11.25 Sales Tax Exemption. The Custom Deliverables or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.

Section 11.26 If Contractor is providing the State with Goods or Custom Deliverables it is important that Contractor follows industry-standard policies and procedures to minimize security risk and ensure that State and Federal laws applicable to the operation of its business are followed. At execution of this project, no software development is being procured or is anticipated. If such becomes the case, the parties will negotiate any additional terms in good faith.

Section 11.27 Public Information. Contractor agrees that this Agreement, any related purchase orders, related invoices, related pricing lists, and the proposal ("GRAMA"). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Agreement, any related purchase orders, related invoices, related pricing lists, and proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Agreement, including any related purchase orders, related invoices, related pricing lists, or the proposal.

Section 11.28 Payments. Payments will be made within thirty (30) days from receipt of a correct invoice is received. After sixty (60) days from the date a correct invoice is received by the appropriate State official, Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. Contractor agrees that if during, or subsequent to the Agreement an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, promptly refund to the Eligible Users any such overpayments.

Section 11.29 Compliance with Accessibility Standards. Contractor represents and warrants that certain of the Services it provides to Customer under this Agreement may be configured by Customer to comply with the applicable requirements for Customer's customers with disabilities. Notwithstanding the foregoing, Customer is solely responsible to configure the Services to comply with the applicable requirements. Support pages regarding accessibility can be found at www.qualtrics.com/support.

Section 11.30 Individual Customers. Each Eligible User that purchases Services from this Contract will be treated as if they were Customer. Each Eligible User will be responsible to follow the terms and conditions of this Agreement. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.

Section 11.31 Reports and Fees.

- (a) Administrative Fee: Contractor agrees to provide an administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be the amount listed on the first page of this Agreement and will apply to all purchases (net of any returns, credits, or adjustments) made under this Agreement.

(b) Reports: Qualtrics agrees to provide a utilization report semi-annually. The report will show the dollar volume of purchases by each Eligible User. The report will be provided in secure electronic format through the Division’s Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.

(c) Report Schedule: Utilization reports shall be submitted by Qualtrics semi-annually in accordance with the following schedule:

Period End	Reports Due
June 30	July 31
December 31	January 31

(d) Fee Payment: After the Division receives the utilization report it will send Contractor an invoice for the total applicable administrative fee owed to the Division. Contractor shall pay the applicable administrative fee within thirty (30) days from receipt of invoice.

(e) Timely Reports and Fees: If the applicable administrative fee is not paid by thirty (30) days of receipt of invoice or utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

Section 11.32 Procurement Ethics. Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

The Parties have executed this Master Services Agreement as of the Effective Date.

Qualtrics, LLC	State of Utah, Division of Purchasing
By:	By:
Name:	Name: Christopher Hughes
Title:	Title: Director
Date:	Date:
Address: Qualtrics, LLC Attn: Legal Department 333 W River Park Dr. Provo, UT 84604 United States	Address: Division of Purchasing & General Services 3150 State Office Building Capitol Hill Salt Lake City, UT 84114-1061

Attachments and Exhibits:



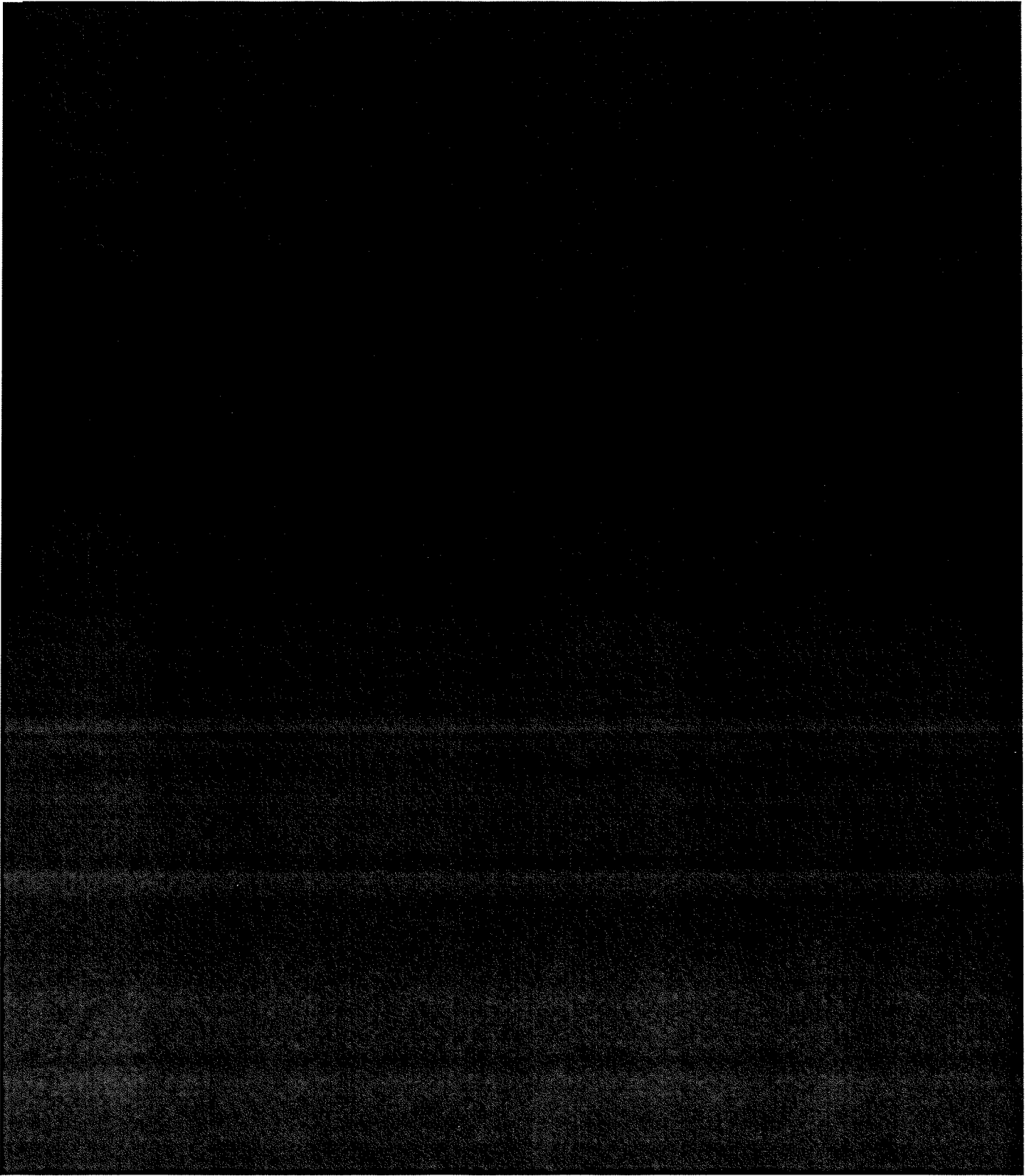
Exhibit A: Insurance Coverage

Exhibit B: Service Level Agreement/Incident Response

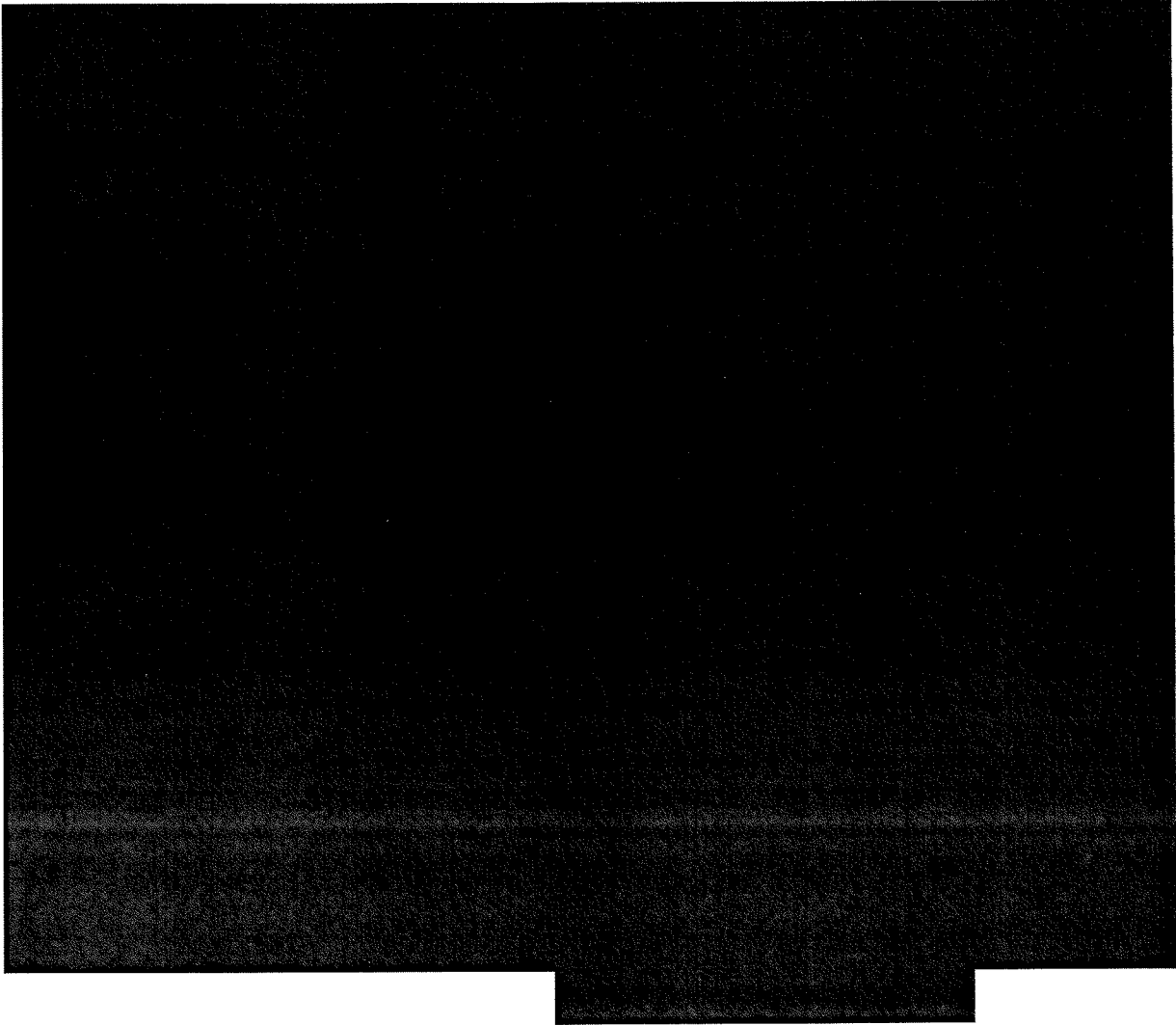
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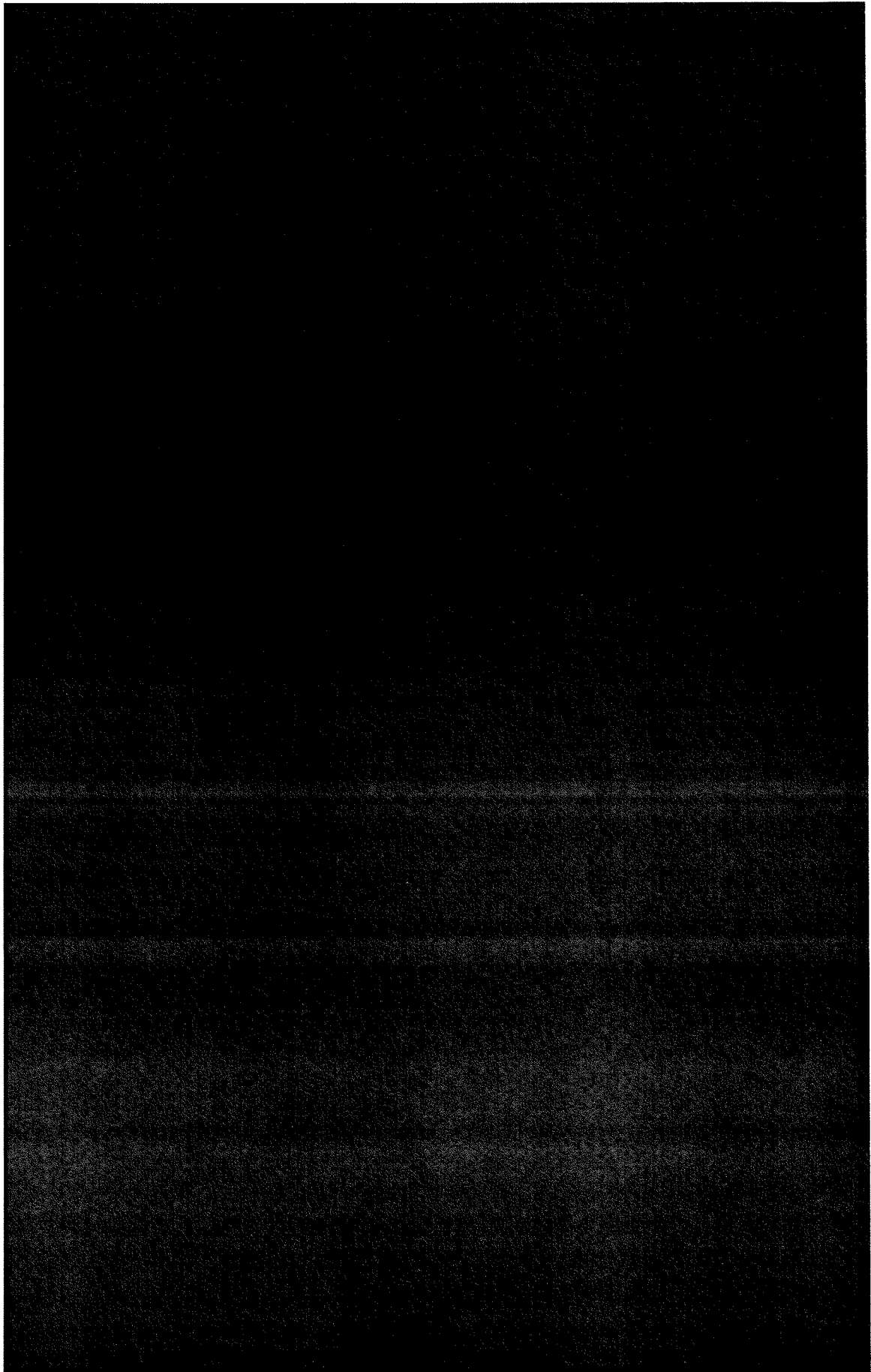
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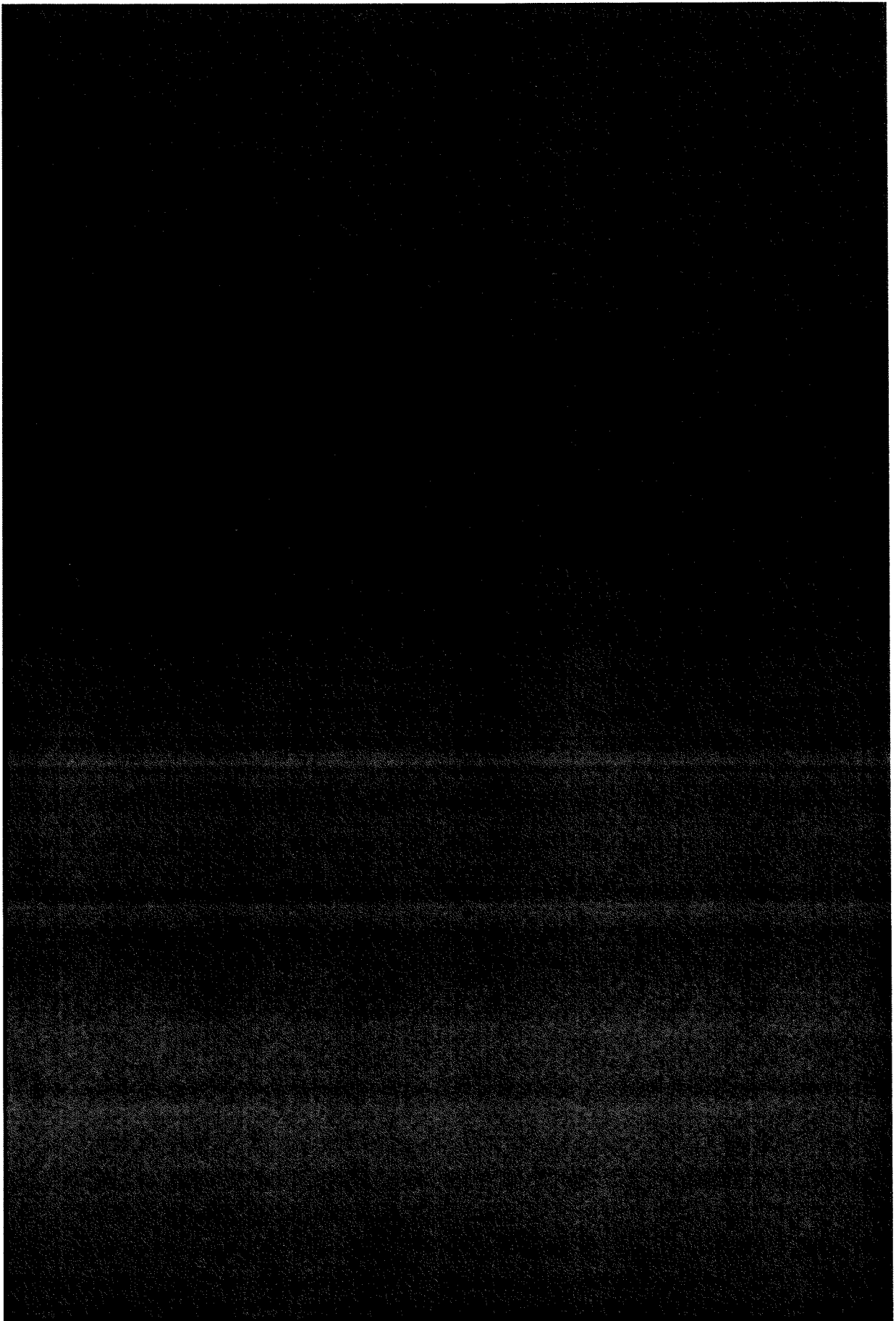


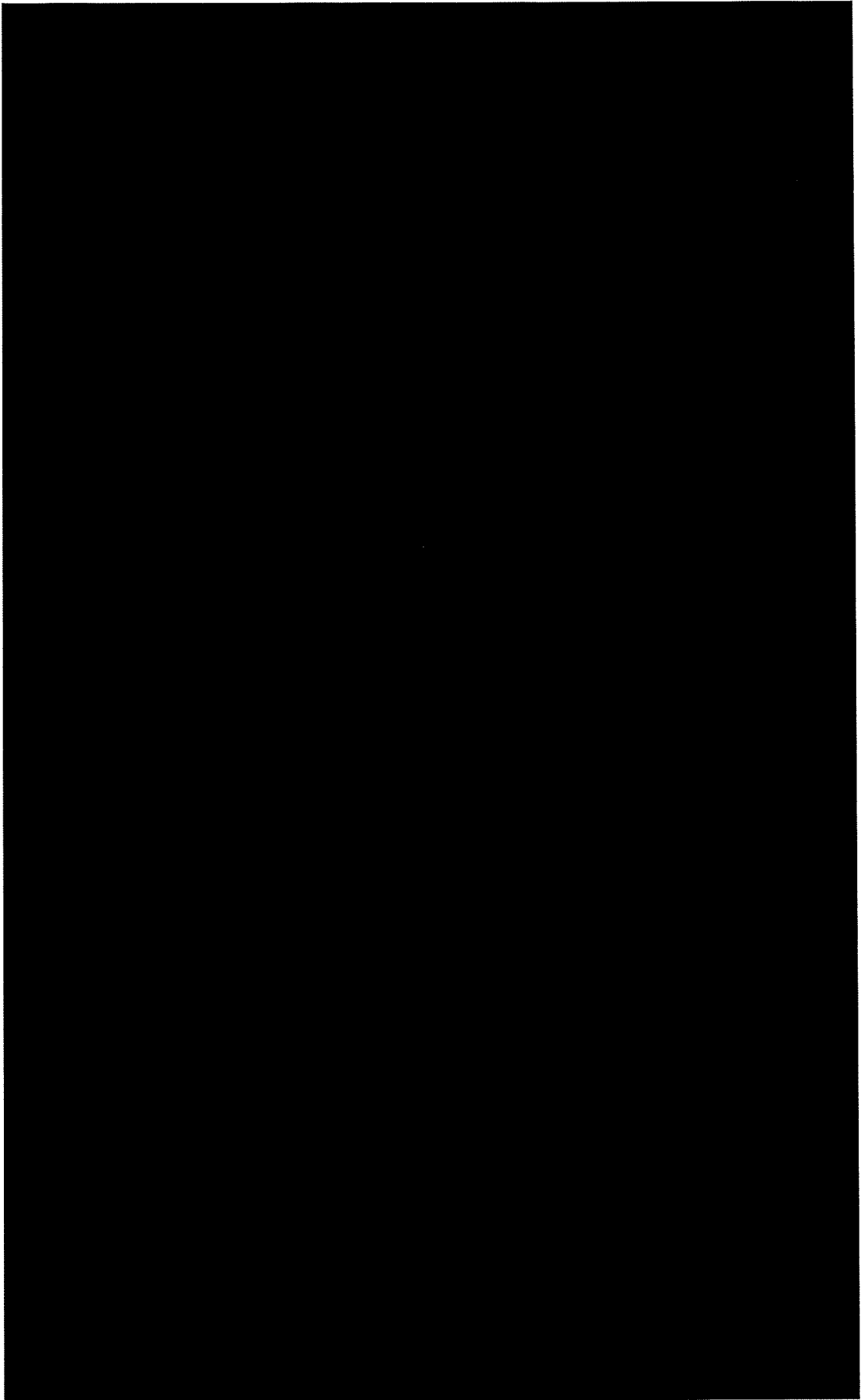
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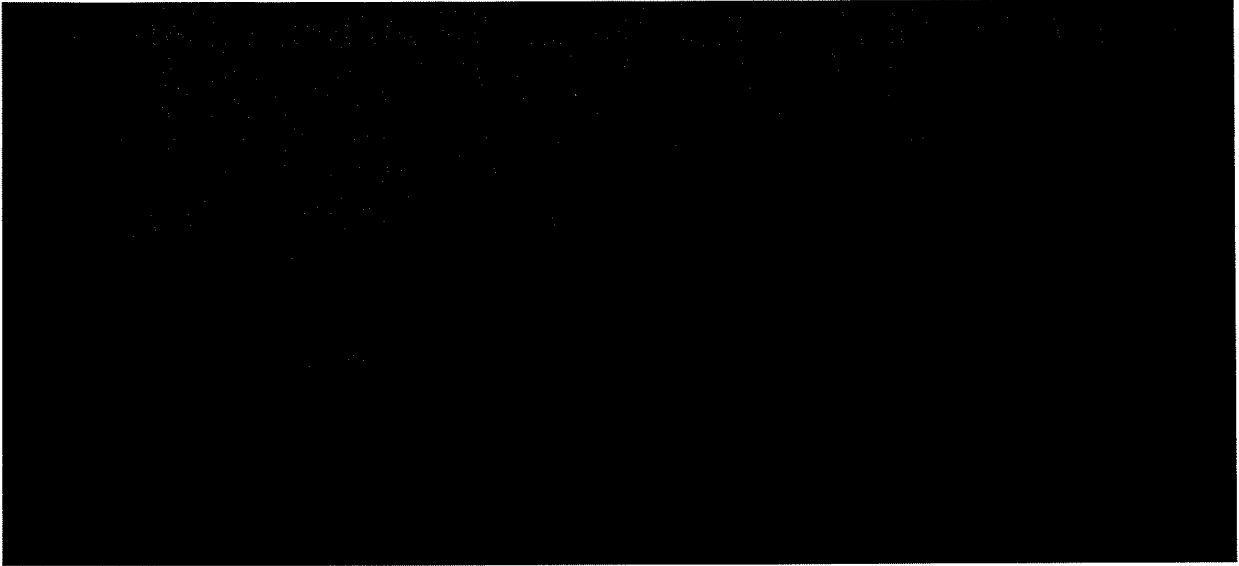






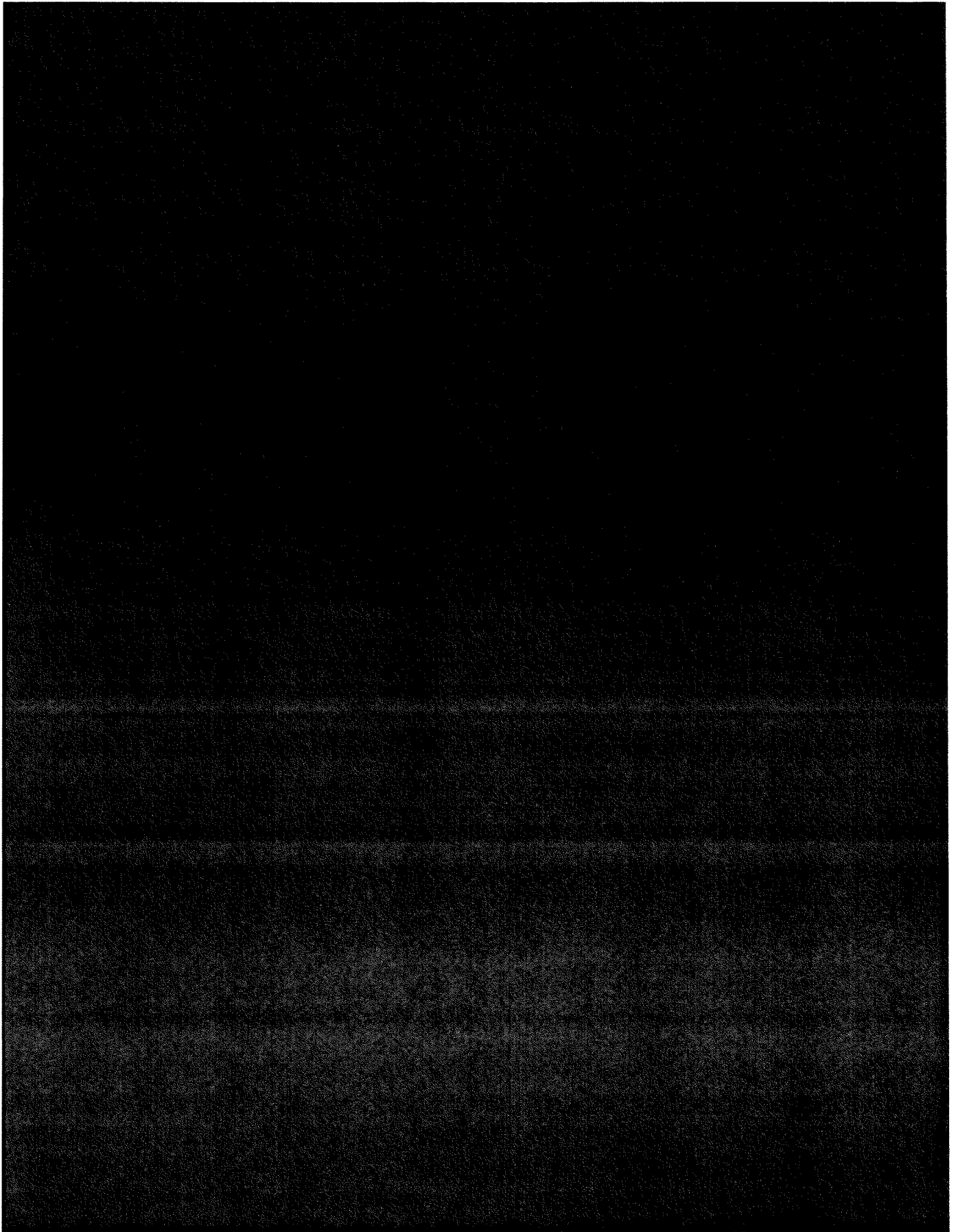






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V180914 20 September 2019



Insurance

Qualtrics shall at its own expense secure and continuously maintain throughout the Term the following insurance with companies qualified to do business in the jurisdiction in which the services will be performed and rating A-VII or better in the current Best's Insurance Reports published by A.M. Best Company.

1. Worker's Compensation Insurance, which shall fully comply with the statutory requirements of all applicable state and federal laws.
2. Commercial General Liability Insurance with a combined single limit of liability of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, death, property damage, personal injury, and products.
3. Business Automobile Liability Insurance covering all owned and non-owned and hired vehicles used by Qualtrics with a combined single limit of liability of \$1,000,000 for injury and/or death and/or property damage.
4. Excess (Umbrella) coverage with respect to Sections 1, 2, and 3 above with a per occurrence limit of \$5,000,000.
5. Cyber and Errors and Omissions (Professional Liability) Insurance with limit of \$5,000,000, covering liabilities arising from a) product or service financial injury caused by a product or service defect or performance failure; b) technology-related injury caused by any errors or omissions and all series of continuous, repeated or related acts, errors or omissions; and c) breach mitigation and notification expenses related to a privacy breach. Coverage also includes reasonable legal litigation expenses.
6. Crime Insurance (Employee Dishonesty) with limit of \$1,000,000.

Qualtrics Incident Response and Service Levels

Service Levels

1. **Availability.** Qualtrics will use commercially reasonable efforts to ensure that the Subscription Services will be available at all times, excluding when the Subscription Services are unavailable due to (a) required system maintenance as determined by Qualtrics ("**Scheduled Maintenance**"); and (b) causes outside of the reasonable control of Qualtrics that could not have been avoided by its exercise of due care, including any outages caused by: (i) the Internet in general; (ii) a Customer-caused event; or (iii) any Force Majeure Event ("**Availability**").
2. **Scheduled Maintenance.** A minimum of five days' advance notice will be provided by email to Customer for all Scheduled Maintenance exceeding two hours. For Scheduled Maintenance lasting less than two hours, notice will be displayed on the login page.
3. **Downtime.** "**Downtime**" is defined as the Subscription Services having no Availability, expressed in minutes.
4. **Remedies for Downtime.** If Downtime exceeds a certain amount per month, Customer will be entitled, upon written request, to a credit ("**Fee Credit**") based on the formula: Fee Credit = Fee Credit Percentage set forth below * (1/12 current annual Fees paid for Software affected by Downtime). All times listed immediately below are per calendar month.
 - a. If Downtime is 30 minutes or less, no Fee Credit Percentage is awarded.
 - b. If Downtime is from 31 to 120 minutes, Customer is eligible for a Fee Credit Percentage of 5%.
 - c. If Downtime is from 121 to 240 minutes, Customer is eligible for a Fee Credit Percentage of 7.5%.
 - d. If Downtime is 241 minutes or greater, Customer is eligible for a Fee Credit Percentage of 10.0%
 - e. If, in each of three consecutive months, (i) Downtime is 241 minutes or greater or (ii) Scheduled Maintenance is greater than 8 hours, Customer is eligible for a pro-rated refund and may terminate this Agreement for cause.
5. **Fee Credits.** Except as specified in Section **Error! Reference source not found.** above, Fee Credits will be Customer's sole and exclusive remedy if Qualtrics fails to meet the Service Levels. Fee Credits will be applied to Customer's next invoice.

Incident Response

1. An "**Incident**" is declared by Qualtrics when any of the following occurs:
 - a. A malfunction, disruption, or unlawful use of the Services;
 - b. The loss or theft of Data from the Services;
 - c. Unauthorized access to Data, information storage, or a computer system; or
 - d. Material delays or the inability to use the Services.
2. An Incident involving the loss or unauthorized access of Data, not due to Customer's errors or omissions, will always be categorized as Code Red. In such a case, Customer will be notified as expeditiously as possible after a disclosure is discovered. Qualtrics will conduct a formal investigation and will deliver an official written report to Customer within two weeks of the Incident.
3. Incidents are prioritized as set forth in the Incident Level Table below.

Incident Level Table

Incident Level	Typical Conditions	Resolution Response
4	A minor issue affecting an individual user that may not be reproducible.	Addressed by support team for workaround or other resolution.
3	The problem is reproducible and has an impact on usability of the product, though a workaround exists to garner full functionality.	Addressed in a subsequent release in a reasonable timeframe.
2	A product is effectively unusable on a widespread basis; survey taking experience significantly affected.	Corrected as expeditiously as possible after code is developed and tested.
Code Red	Loss of a key functionality or access to Service. Data loss due to unauthorized access. A suspected/actual data breach or security threat. Survey taking severely hindered or impossible.	Full engineering efforts directed toward resolution. After hours, Engineer-on-call will be contacted and will work nonstop until resolution is met.