

MASTER SOFTWARE SUBSCRIPTION SERVICES AGREEMENT

This Master Software Subscription Services Agreement (this “**Agreement**”) is made and entered into on the last date signed below (“**Effective Date**”) between **Miller Mendel, Inc.**, a Washington corporation with an address at 1425 Broadway, #430, Seattle, WA 98122 (“**MMI**”), and the City of Irvine by and through the Irvine Police Department, with an address at 1 Civic Center Plaza, Irvine, CA 92623 (“**Client**”). MMI and Client may each be referred to individually as a “**Party**” or collectively as the “**Parties**.”

BACKGROUND

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

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

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

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

AGREEMENT

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

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

1.3 “Applicant Data” means any data transmitted by Applicant to the eSOPH System.

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

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

1.6 “Availability” shall have the meaning described in Section 2.14 (Availability Standards).

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

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

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

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

1.11 [Deleted].

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

1.13 “Entry” has the meaning ascribed to it in Section 2.3.2.

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

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

1.16 “Subscription Term” shall have the meaning given in Section 4.1 (Term).

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

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

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

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

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

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

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

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

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

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

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

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

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

2. eSOPH SYSTEM LICENSE AND SUPPORT SERVICES

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

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

2.2.1 [Deleted]

2.2.2 [Deleted]

2.3 Set-Up and Use of the eSOPH System.

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

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

Applicant(s). Any Authorized User, including Applicants, must be capable of entering into legally binding agreements.

2.3.3 If Client intends to allow Authorized Users who are legal minors to access and use the eSOPH System, Client will, at Client's sole expense and risk, provide a legally sufficient release agreement to be executed by the minor's legal guardian(s), prior to the minor's access to the eSOPH System. The release must include language legally sufficient to hold MMI harmless and release MMI of all liability. Client agrees it shall be solely liable for such use, and will retain all executed release agreements, and will provide MMI a fully legible copy of the requested release agreement(s), if so requested by MMI, within five calendar days of MMI's request. Client is solely responsible for researching and complying with all laws regarding a minor's access to and use of the eSOPH System.

2.4 Restrictions on Use.

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

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

2.5 Acknowledgment of Ownership and Limited License Rights. As between MMI and Client, MMI is the sole and exclusive owner of the eSOPH System (including all updates), Documentation, and all Intellectual Property Rights associated therewith. The eSOPH System is licensed not sold, to Client. Client shall have only the rights specifically granted by MMI under this Agreement. No additional rights are granted or may be inferred. Client shall not: (i) make any modifications to any portion of the eSOPH System to which it is not intended to have access, via the user interface; (ii) attempt to reverse engineer, disassemble, reverse translate, decompile, decode or copy any portion of the eSOPH System; (iii) remove any patent, trademark, service mark or copyright notices which MMI places on the eSOPH System; or (iv) take any other actions inconsistent with the limited rights granted by this Agreement.

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

2.6 Administrative Users. Client shall designate one person as their Primary Administrative User on Exhibit A, which is hereby incorporated into this Agreement. Client may designate additional Administrative Users authorized to contact MMI for Support Requests pursuant to Sections 2.9 (Support Services) and 2.10 (Support Request Requirements). As described within this Agreement, the person(s) listed in the Exhibit A are the only representatives of Client authorized to contact and submit support requests to MMI, and they are responsible for troubleshooting all Authorized User and Applicant issues prior to submitting support requests to MMI. Client is responsible for maintaining a current list of the Administrative User(s) with MMI, and must notify MMI within 48 hours of any change in an Administrative User by providing MMI an updated Exhibit A listing all of Client's

Administrative Users. Client shall be responsible for training replacements for any of Client's Administrative Users. If Client requests MMI provide replacement training, such training shall be provided at MMI's then-standard rates for training. Client shall pay MMI's then standard hourly rate for support and assistance provided to Administrative Users necessitated from Client's failure to designate a properly trained person as an Administrative User.

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

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

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

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

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

2.9.3 Excluded Services. The Support Services do not include any of the following: (a) configuration of other applications required to access eSOPH System, including, but not limited to Client's internet service, operating systems, firewalls, or networking components; (b) Client's ongoing training needs; (c) any version upgrades of Client's 3rd party software used in connection with the eSOPH System; (d) enhancements, modifications, or customization to the eSOPH System performed at the Client's request and not intended to resolve a Defect; (e) any version or release of the eSOPH System that MMI may issue as a separate edition, including an alternative or premium version of eSOPH System for which additional fees may be required to access; or (f) resolution of Defects caused by any of the events described in Section 2.13 (Exclusions), below.

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

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

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

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

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

- (a) Client’s reasonable, good faith classification of the priority (High, Medium, or Low) of the reported Defect in accordance with the priority levels and definitions contained in Section 2.12 (Resolution Targets and Priority Levels), below, with explanation;
- (b) Names of Applicants, References and Authorized Users involved with clear notation of their title;
- (c) Date and time of each occurrence;
- (d) Computer operating system used by party experiencing the defect;
- (e) Name of internet browser and version;
- (f) Specific steps to allow MMI personnel to recreate the issue;
- (g) Exact wording of any error message received, URL or name of page it was received on, or a screen shot of the error;
- (h) A description of all steps previously completed to resolve the defect; and
- (i) If MMI has permission to contact the party directly, if needed. Include contact information.

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

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

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

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

**TABLE 2.12
PRIORITY LEVELS**

Priority	Description	Target Resolution Time
High: Complete outage or severe impact to Client’s	A Defect is High priority if it (a) prohibits utilization of some or all functionality of the eSOPH System by all or most Authorized Users or Applicants; (b) has a serious potential impact to Client’s business (e.g., an impacted	24 hours

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

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

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

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

2.13.3 Problems with Client and/or its Authorized Users' telecommunications systems, Client and/or its Authorized Users' internet service provider, or the public internet to the extent affecting internet performance on a general basis (e.g., such as a regional outage), natural disasters, denial of service attacks, acts of terrorism, labor strikes, any other force majeure event, or any other event reasonably beyond MMI's control.

2.14 Availability Standards

2.14.1 Scheduled Downtime. MMI shall strive to avoid and minimize disruptions to the availability and functioning of the eSOPH System. The eSOPH System may be unavailable for scheduled backup and system maintenance ("**Scheduled Downtime**") during off-peak hours between the hours of 10:00 p.m. and 3:00 a.m., Pacific Standard Time (the "**Maintenance Window**"). On a limited and discretionary basis, MMI may adjust the Maintenance Window to occur between the hours of 7:00 p.m. and 3:00 a.m. Pacific Standard Time by providing Client with at least 24 hours' notice posted on the log-in screen of the eSOPH System. MMI shall use its best commercially reasonable efforts to schedule all planned downtime during such Maintenance Window. If emergency maintenance must be performed on the eSOPH System which, in MMI's sole discretion, cannot wait until the normal Maintenance Window, MMI will promptly notify Client of such lack of Availability (in advance, if possible) and undertake reasonable commercial efforts to minimize the impact and duration of any such maintenance activity. Any such downtime for maintenance occurring outside the Maintenance Window shall not be deemed Scheduled Downtime for purposes of calculating the Availability percentage described in Section 2.14.3, below.

2.14.2 Uptime Guarantee; Remedies for Excessive Downtime. MMI shall provide Availability of the eSOPH System at least 99% of the time, excluding Scheduled Downtime and lack of Availability caused by the events described in Sections 2.13 and 2.14.3. In the event the Availability of the eSOPH System falls below 99% in any calendar month, MMI will issue to Client a service credit ("**Service Credit**") in the form of

additional Entries equal to the percentage of Entries purchased by Client for the calendar month (Entries per current Subscription Term divided by the total months in the respective Subscription Term) set forth in the table below corresponding to the actual Availability of the Software. To receive Service Credits, Client must submit a written request to MMI within fifteen (15) days after the end of the calendar month in which the eSOPH System failed to achieve 99% Availability, or Client's right to receive Service Credits with respect to such unavailability will be waived by Client. The remedies stated in this Section are Client's sole and exclusive remedies and MMI's sole and exclusive obligations for service interruption or lack of Availability.

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

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

**TABLE 2.14
DOWNTIME FEE CREDIT**

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

3. FEES AND PAYMENT

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

3.1.1 Client Set-up. Upon receipt of this fully executed Agreement and Client's purchase order, MMI will begin the set-up process of Client on the eSOPH System in accordance with the terms of the Agreement. If Client requests the setup date and time be changed from what was originally stated by Client, Client is responsible for reimbursing MMI for all costs MMI incurs in making the travel arrangement adjustments, if travel was necessary.

(a) Client is responsible for scheduling end user training with MMI within 45 calendar days from the date of admin setup and training. End user training must be completed within 60 calendar days from the date of admin setup and training. If Client fails to complete the end user training within the timeline stated, the admin setup and training will need to be redone. MMI will invoice client again for the admin setup and training. Client agrees to pay such invoice.

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

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

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

3.1.5 Entries.

(a) Client will be invoiced for Entries, as listed in Table 3.2 (Subscription Term Fees and Credits) immediately following MMI adding the Entries to the Client's account. Client may purchase additional Entries one time at the then-current rate during the active Subscription Term without incurring an administrative fee. Entries added thereafter during a given Subscription Term will automatically incur an additional twenty percent (20%) administrative fee in addition to the per-Entry fee. If the purchase is for 150 or more Entries, the administrative fee will be waived.

(b) Client may carry over Entries from a prior Subscription Year which were paid for but not used to the following Subscription Year, but only when eligible. To be eligible, client may not have any outstanding past due invoices.

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

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

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

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

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

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

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

TABLE 3.2**LICENSE TERM FEES AND CREDITS**

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

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

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

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

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

3.6 [Deleted]

4. TERM, RENEWAL AND TERMINATION

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

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

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

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

4.3 Termination.

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

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

(a) If Client terminates this Agreement prior to expiration of the current Subscription Term or current Renewal Term without cause, all fees for the remainder of the respective Subscription Term or Renewal Term listed in Table 3.2 (Subscription Term Fees and Credits) shall become due and payable. Client shall pay all such fees in addition to any balance already outstanding within thirty (30) days of receipt of invoice.

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

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

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

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

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

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

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

5. DATA ACCESS, CONFIDENTIALITY AND SECURITY

5.1 Authorized User Access Only. Client is responsible for all use of its Authorized Users accounts on the eSOPH System. Client shall ensure that its Authorized User(s) properly control and limit access to the eSOPH System to Client's appropriate Authorized Users, and that Client's Authorized Users properly protect their logins, passwords and all other login credentials to prevent unauthorized access and misuse of Client Data, Applicant Data and any other information that may be accessed through the eSOPH System. Client is responsible for its own policy regarding Authorized Users changing their passwords, minimum password complexity requirements beyond what is required by the eSOPH System, and which computer terminals may be used to access the eSOPH System by its Authorized Users, including any unattended devices or computers logged into the eSOPH System. Client shall ensure any previous Authorized User who no longer has a valid purpose to access the eSOPH System will have their eSOPH System login credentials disabled within the eSOPH System, without delay. Former Authorized Users who separate from their relationship with Client shall have their login credentials immediately disabled, without delay, by Client. Client will ensure that each Authorized User has unique login credentials; an Authorized User may not share or disclose its login credentials to any other person, even if such other person is also an Authorized User.

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

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

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

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

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

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

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

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

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

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

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

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

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

5.15 Backups. For Client Data on the production system, MMI shall record snapshot copies of Client Data hourly during the Term and shall record full backup copies of Client Data once per week. Backup copies are stored on both MMI’s production server, to enable a quick restore if necessary, and remotely within Amazon Web Services GovCloud. Backup records that are older than one calendar week are automatically purged from MMI’s production system. At least three months of backup copies are stored remotely within AWS GovCloud. MMI uses proprietary software to monitor the automated tasks of Microsoft SQL. For Client Data the Client has sent to the archive storage solution: This data will be retained within the archive storage solution until such time client purges such data. Data sent to archive storage by the Client is not backed up to help control costs and offer a less expensive long-term storage solution for the Client.

5.16 [Deleted]

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

6. REPRESENTATIONS AND WARRANTIES

6.1 Client represents and warrants that:

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

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

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

6.2 MMI represents and warrants that:

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

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

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

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

7. ASSUMPTION OF RISK; LIMITATION OF LIABILITY

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

7.2 Mutual Indemnification. *To the extent permitted by law*, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Party"), including each of the Indemnified Party's respective Affiliates, officers, directors, shareholders, employees, representatives, agents,

successors and assigns (each an “Indemnified Person”), from and against all claims by any third party asserted in any cause of action, and including any damages, penalty, cost or expense (including reasonable attorneys' and witnesses' fees and costs), to the extent such cause of action arises from (a) the Indemnifying Party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a material breach by the Indemnifying Party of any of its representations, warranties, covenants or obligations under this Agreement; PROVIDED, however, such indemnity shall not extend to claims arising from any breach of this Agreement or willful or negligent act by the Indemnified Party or an Indemnified Person of the Indemnified Party, and provided that: (i) the Indemnified Person promptly notifies the Indemnifying Party of the claim in writing; and, (ii) the Indemnified Person and Indemnified Party provide the Indemnifying Party with the assistance, information and authority necessary to perform the Indemnifying Party's obligations under this Section. The Indemnified Person shall be entitled to participate at its option and expense through counsel of its own selection, and may join in any legal actions related to any such claims, demands, losses, damages, costs, expenses and penalties. The Indemnifying Party shall not enter into any settlement which includes an admission of negligence or wrongdoing by any Indemnified Person, without the prior written consent of such Indemnified Person.

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

9. CORRECTIVE ACTIONS. If all or any part of the Software is held, or MMI determines that it could be held, to infringe, wrongfully use or misappropriate any third-party intellectual property right, MMI at no cost to Client: (a) will procure for Client the right to continue using the eSOPH System in accordance with its rights under this Agreement; (b) replace the item with a substantially equivalent item that does not infringe, wrongfully use or misappropriate any third-party intellectual property rights; or (c) modify the item (without material loss of functionality) so that it no longer infringes, wrongfully uses or misappropriates any third-party intellectual property right. If MMI is unable to successfully accomplish any of the actions described above after using its commercially reasonable best efforts to accomplish each of them in a timely manner, then MMI will refund to Client a pro-rated amount of the license fees paid by Client hereunder in connection with the unused portion of its licensed rights to the eSOPH System under this Agreement. The remedies set forth in this Section 9 are Client's sole and exclusive remedy and MMI's sole obligation with respect to breach of the warranty contained in Section 6.2.2.

10. INSURANCE

10.1 Throughout the Term MMI, at its sole expense, will carry and maintain: (a) Commercial General Liability Insurance in the amount not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate; (b) Professional Liability Insurance in the amount not less than \$1,000,000 per claim and in the aggregate; and (c) “Cyber” Insurance in the amount not less than \$1,000,000 combined single limit occurrence, \$2,000,000 aggregate. MMI will request a Certificate of Insurance from the insurance agent or carrier listing Client as an Additional Insured, and provide the certificate to the Client.

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

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

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

For Client, copy of Notice(s) to:

MILLER MENDEL, INC.

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

Office of the Chief of Police
Irvine Police Department
1 Civic Center Plaza
Irvine, CA 92623

12. GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

12.9 Entire Agreement. This Agreement together with the Quotes and any exhibits attached hereto contains the entire agreement and understanding of the Parties with respect to the transactions and matters contemplated herein, supersedes all prior and contemporaneous agreements or negotiations between Client and MMI concerning the subject matter hereof, and cannot be amended except by a writing dated subsequent to this Agreement and signed by both Parties. To the extent the terms and conditions of this Agreement conflict with the terms and conditions of an exhibit, the terms and conditions of this Agreement will control. Terms and/or conditions listed in purchase orders(s) from Client that are in conflict with or in addition to the terms of this Agreement are not accepted

by MMI. No course of dealing or usage of trade may be invoked to modify the terms and conditions of this Agreement.

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

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

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

12.13 Immigration Law Compliance. Under the provisions of A.R.S. §41-4401, the Contractor warrants to the Client that the Contractor and all its subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

13. Social Intelligence Corporation Services Option

Client Initials: _____: Section 13 terms **are** applicable.

13.1 SIC Services. This Section 13 (Social Intelligence Corp. Services Option) describes optional services available to Client for additional cost. Client may subscribe to, and MMI agrees to provide, a service through the eSOPH System to deliver access to Social Intelligence Corp. (“**SIC**”) internet and social media background screening and/or monitoring of Applicants to produce monitoring reports, screening reports, and social intelligence monitoring (collectively, “**SIC Reports**”) and other services as may be available from SIC through the eSOPH System (the “**SIC Services**”).

13.2 Fees and Payment. Fees and payments for the SIC Services are governed by the terms and conditions set by SIC pursuant to the SIC Agreement, the terms of which are hereby incorporated by reference into this Agreement upon Client’s execution of their signature below.

13.3 Protection of Applicant Data. Any information, materials, data or other content made available to MMI, including any SIC Reports, transmitted by an Applicant or by a Client about an Applicant to the eSOPH System that is used for the SIC Services is **Applicant Data**. Client agrees that Client shall be solely responsible for

assuring the secure and confidential manner in which Client stores, delivers, and transmits SIC Services to its Authorized Users

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

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

13.5.1 Client certifies that it is a user of ‘consumer reports’ and will only use SIC Reports for “employment purposes” and no other (as those terms are defined in 15 U.S.C. § 1681(a)).

13.5.2 Client must comply with all applicable procedures and requirements of the FCRA and applicable state law, including, but not limited to: (i) providing a proper disclosure, (ii) obtaining a written authorization, (iii) providing a certification to MMI that it will comply with the FCRA and will not use the SIC Reports in violation of any EEO law or regulation, and (iv) following the adverse action requirements set forth in the FCRA and applicable state laws. Client agrees to take all reasonable measures to enforce said requirements.

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

13.5.4 To the extent permitted by law, Client agrees to defend, indemnify and hold MMI and SCI harmless from any and all claims or damages related to the SIC Reports or arising from adverse actions (as set forth in Section 7.2 herein) by Client against Applicant based on eSOPH’s SIC Services.

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

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

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

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

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

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

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

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

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

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

13.8.5 allow any third party to access the SIC Services;

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

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

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

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

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

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

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

13.12 Termination. In addition to and without limiting Section 4.3 of the Agreement, MMI may terminate the optional SIC Services provided pursuant to this Section 13 at any time with or without cause or notice at MMI’s sole discretion without penalty. Termination of the SIC Services shall not constitute termination of the eSOPH MSSSA.

14. Experian Services Option

Client Initials: _____: Section 14 terms **are** applicable.

14.1 Experian Services. This Section 14 (Experian Services Option) describes optional services available to Client for additional cost. Client may subscribe to a service through the eSOPH System to deliver access to the Experian Information Solutions, Inc. (“Experian”) functionality to obtain consumer credit reports and investigative consumer reports (collectively, “Credit Reports”) about Applicants and other services as may be available from Experian through the eSOPH System (the “Experian Services”).

14.2 Applicant Data. Data transmitted by an Applicant or by a Client about an Applicant to the eSOPH System that is used for the Experian Services is Applicant Data. For Applicant Data used for the Experian Services, the Parties agree to each, at minimum, meet the requirements set forth in 16 C.F.R. § 314.4, and take all necessary steps reasonably designed to (i) ensure the security and confidentiality of Experian Services and Applicant Data, (ii) protect against any anticipated threats or hazards to the security or integrity of the Experian Services and Applicant Data, and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any Applicant.

14.3 Fair Credit Reporting Act. Client agrees that Client, not MMI, is solely responsible for compliance under the Fair Credit Reporting Act of 1996, as amended (15 US Code 1681) (“FCRA”). Client further acknowledges and agrees as follows:

14.3.1 Client agrees and understands that it must comply with the “FCRA Requirements” notice and Experian’s “Access Security Requirements.” Client agrees to take all reasonable measures to enforce said requirements.

14.3.2 Client acknowledges receipt of a copy of the Summary of Consumer Rights prescribed by the Bureau of Consumer Financial Protection (“Bureau”) under Section 609(c)(1) of the FCRA and agrees to attach a copy of such Summary of Consumer Rights to each Credit Report used for employment purposes as required by Section 604(b)(3)(A)(ii) of the FCRA.

14.3.3 Client certifies it will request and use the Experian Services strictly in accordance with FCRA. Without limiting the foregoing, Client certifies that it will request and use the Experian Services solely in connection with (i) a single credit transaction with a consumer, or, if applicable, for another “permissible purpose” as defined by the FCRA; and (ii) transactions involving the consumer about whom such information is sought and will not request or use such Experian Services for purposes prohibited by law. Client further certifies that it will comply with all requirements of the FCRA applicable to it. If Applicant makes a timely request to Client, Client may share the contents of Applicant’s report with Applicant as long as Client does so without charge and only after authenticating Applicant’s identity.

14.3.4 Client agrees it is solely responsible for and subject to compliance under all federal, state and local laws, rules and regulations applicable to Client’s access, collection, storage, transmission, receipt, and use of the Experian Services and data. Further, Client shall comply with the FCRA.

14.4 Notice and Consent. In using the Experian Services, Client shall comply with all applicable laws, including but not limited to FCRA and applicable privacy and data security laws. Without limiting the foregoing, Client certifies that:

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

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

14.4.3 Client will provide any legally required notices or disclosures and will obtain legally adequate consent from all Applicants as required by applicable laws.

14.5 Death Master File. Client acknowledges that Experian Services may contain information from the Death Master File as issued by the Social Security Administration. Pursuant to Section 203 of the Bipartisan Budget Act of 2013 and 15 C.F.R. § 1110.102, Client certifies that, consistent with its applicable FCRA or Gramm-Leach-Bliley Act use of Experian Services, Client’s use of deceased flags or other indicia within the Experian Services is restricted to legitimate fraud prevention or business purposes in compliance with applicable laws, rules, regulations or fiduciary duty, as such business purposes are interpreted under 15 C.F.R. § 1110.102(a)(1). Client further certifies

that it will not take adverse action against any Applicant without further investigation to verify the information from the deceased flag or other indicia within the Experian Services.

14.6 Employment Decisions Based on Credit Report. Client certifies that, before taking any adverse action based in whole or in part on the Credit Report generated by Experian Services for employment purposes, Client will provide to the Applicant about whom the report relates (i) a copy of the report, (ii) a description in writing of the rights of Applicant as prescribed by the Bureau under the FCRA; and (iii) a statement that information from the Credit Report and the Experian Services will not be used in violation of any applicable federal or state equal employment opportunity law or regulation. Client agrees it is solely responsible for any adverse actions taken against an Applicant and for Client's compliance under the Bureau and FCRA. In addition to any other indemnification provisions of this Agreement, Client agrees to defend and hold MMI harmless from all claims or damages arising from adverse actions by Client against Applicant arising from use of eSOPH's Experian Services.

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

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

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

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

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

14.7.5 allow any third party to access the Experian Services;

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

14.7.7 use the Experian Services or data to identify or solicit potential customers for its products or services;

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

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

14.8 Experian Services Use Restrictions. Client agrees that it will not, either directly or indirectly, itself or through any agent or third-party request, compile, store, maintain, resell or use the Experian Services (including any of the information contained in the Credit Report) to build its own credit reporting database. Client shall be solely responsible for assuring the secure and confidential manner in which it stores, delivers, and transmits Experian Services to its Authorized Users.

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

MILLER MENDEL, INC.

14.10 Experian Intellectual Property Rights. Client acknowledges that Experian has expended substantial time, effort and funds to create and deliver the Credit Reports and compile its various databases. All data in Experian’s databases and any other intellectual property not related to the eSOPH System that are part of Experian are and will continue to be Experian’s exclusive property. Nothing contained in this Addendum shall be deemed to convey to Client or to any other party any ownership interest in or to intellectual property or data provided in connection with Experian and eSOPH’s Experian Services.

14.11 No Representations or Warranties. Without limiting the provisions of Section 6 of the Agreement, MMI makes no representations or warranties as to the value, accuracy, or suitability of the Experian Services. Client agrees to be solely responsible for Client’s use of the Experian Services.

14.12 Termination. In addition to and without limiting Section 4.3 of this Agreement, MMI may terminate the Experian Services at any time with or without cause or notice at MMI’s sole discretion without penalty. Termination of the Experian Services shall not constitute termination of the eSOPH MSSSA.

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

For Miller Mendel, Inc. (“MMI”)



Tyler Miller, President & CEO

January 11, 2022

Date

For Client: City of Irvine

DocuSigned by:

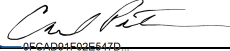
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Signature (Required)

6/1/2023

Date

Dahle Bulosan, Director of Administrative Services
Print name and title (Required)

DocuSigned by:

09CAD01F00EE47D


Signature (Optional)

6/1/2023

Date

Carl Petersen, City Clerk
Print name and title (Optional)

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

DocuSigned by:
By: 
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Jeffrey Melching

MILLER MENDEL, INC.

EXHIBIT A

ADMINISTRATIVE USERS

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

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

PRIMARY ADMINISTRATIVE USER:

Name: Justin Patterson
Title/Position: Training Officer
Email: jpatterson@cityofirvine.org
Primary Phone: 949-724-7142

Do not list more than one Primary Administrative User