



## MASTER SERVICES AGREEMENT & TERMS OF SERVICE

Updated: October 10, 2022

### MASTER SERVICES AGREEMENT

This Master Services Agreement (this "Agreement") is by and between GIS Workshop, LLC, a Delaware limited liability company doing business as gWorks ("gWorks"), and the company, organization, or governmental entity that signs this Agreement ("Client"). This Agreement is effective as of the effective date of the last signature date within this Agreement entered into by and between the parties (the "Effective Date").

gWorks may amend this Agreement from time to time by posting an amended version at its website, accessible via <https://www.gworks.com>, and sending Client written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless Client first gives gWorks written notice of rejection of the amendment. In case of such rejection, this Agreement will continue under its most recently executed provisions, and the amendment will become effective at the start of Client's next Term (or renewal thereof) following the Proposed Amendment Date (unless Client first terminates this Agreement pursuant to Article 5, Term & Termination). Client's continued use of the Services following the effective date of an amendment will confirm Client's consent thereto.

### ARTICLE 1: DEFINITIONS

All capitalized terms used, but not otherwise defined, in this Agreement shall have the meanings ascribed to them in this Article 1:

1.1 "Change Order" means a written change order, which modifies an existing Ordering Document and is signed by authorized representatives of both parties. A Change Order shall be deemed to be part of the applicable Ordering Document for all purposes.

1.2 "Client Materials" means all information, content, data, functionalities, and any other materials provided to gWorks by Client, whether created by Client or a third party, pursuant to this Agreement, for the purpose of assisting gWorks with the performance of its obligations hereunder.

1.3 "Deliverable" means any item that gWorks develops, prepares for, or provides to or for the benefit of Client in the course of providing Services, including any hardware, software, or other product, as well as any data that gWorks provides to Client in connection with any Web-based Services or Desktop Services; provided, that the Web-based Services or the Desktop Services, themselves, shall not be considered Deliverables.

1.4 "Intellectual Property" means all or any: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill

associated therewith; (c) copyrights, copyrightable works (including, without limitation, computer software programs, documentation, algorithms, program code, Specifications, reports, and designs), mask works, and rights in data and databases; (d) trade secrets, knowledge, know-how, techniques, ideas, concepts, and other proprietary information; and (e) all other intellectual property rights, in each case whether existing prior to the date of this Agreement or whether developed in the course of each party's performance of its obligations under this Agreement, whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.

1.5 "Order" means a written agreement identified as an "Order" signed by an authorized representative of Client that sets forth Services and fees for such Services and that incorporates this Agreement and the applicable SOW(s).

1.6 "Ordering Documents" means the Order(s) and SOW(s).

1.7 "Services" means any services rendered by gWorks to or for the benefit of Client, as described in an Ordering Document. Services specifically include any Web-based Services or Desktop Services and any Professional Services that are rendered by gWorks to or for the benefit of Client.

1.8 "Specifications" means the specifications and functionalities to which the Deliverables shall be developed by gWorks, as set forth in an Ordering Document.

1.9 "SOW" means a statement of work or other similar document incorporated into an Order that sets forth the particular Services to be rendered and Deliverables to be developed by gWorks on behalf of Client, the schedule for the delivery of the Services and Deliverables, the respective obligations of the parties, and other relevant information pertaining thereto.

1.10 "Web-based Services" means any gWorks internet-based application, geospatial system, or website or mobile application that the Client has subscribed to by Ordering Document or that gWorks may otherwise make available to the client, and developed, operated, and maintained by gWorks, accessible via <https://gworks.com> or subdomain, <https://frontdeskworks.com> or subdomain, or another designated URL, and may have ancillary products and services, including website hosting and data storage and support services, that gWorks provides to the Client.

1.11 "Desktop Services" means any gWorks desktop-based applications and related support services that the Client has licensed to by Ordering Document or that gWorks may otherwise make available to the Client, and developed, furnished, and maintained by gWorks.

1.12 "Professional Services" means any non-software application service gWorks provides to the Client, including but not limited to software implementation, software onboarding, client onboarding, time and material services, consulting, and projects of a defined scope.

## **ARTICLE 2: SERVICES; DELIVERABLES**

2.1 gWorks shall perform the Services in a professional and workmanlike manner, using qualified personnel, in accordance with the Specifications and the terms set forth in the applicable Ordering Document. To the extent that Client desires to subscribe to any Web-based Services, Client agrees to be bound by the Terms of Service attached hereto as Exhibit A. gWorks will, in its sole discretion, select personnel to render the Services, establish working hours for its personnel, use the resources and materials it deems appropriate to perform the Services, and, within the parameters set forth in an Ordering Document, determine the method, details, and means of performing the Services. gWorks may suspend the performance of Services without notice or liability if: (a) Client fails to pay any amount due to gWorks within 15 days of receiving a non-payment notice from gWorks; (b) there is any event for which gWorks reasonably believes the suspension of the Services is necessary to protect its systems or other clients, or (c) a law enforcement or third party government agency has requested such suspension. If gWorks suspends the Services based on clause (b), and such suspension lasts longer than 15 business days, then Client may terminate this Agreement or any Ordering Document upon written notice to gWorks.

2.2 gWorks shall deliver the Deliverables, along with all relevant documentation, in a timely manner, in accordance with the milestones and delivery dates set forth in the applicable Ordering Document. The parties will agree on any procedures for testing and acceptance of Deliverables in the applicable Ordering Document. Upon final payment by Client for a Deliverable and satisfaction of all outstanding payment obligations, Client shall be deemed the owner of title to such Deliverable, excluding the Intellectual Property embodied therein (unless otherwise set forth in the applicable Ordering Document), and Client will receive a royalty-free, non-exclusive license to use the Intellectual Property embodied in such Deliverable solely in connection with Client's rightful use of the applicable Deliverable, and conditioned upon Client's compliance with its obligations in this Agreement.

2.3 In the event that gWorks agrees to any changes, as may be requested by Client from time to time, to the Services, the Deliverables, or the Specifications, such changes shall be documented in a written Change Order.

## **ARTICLE 3: CLIENT OBLIGATIONS**

3.1 Client shall provide gWorks with reasonable access to Client's personnel, facilities, equipment, and Client Materials during normal business hours and otherwise as reasonably requested by gWorks, to enable gWorks to provide the Services. Except as expressly set forth in this Agreement, gWorks will have no liability for any damages incurred by Client due to a breach of the security of Client's facilities or technology. Client shall take such actions as are reasonably necessary to protect the security of said facilities and technology. gWorks shall have no liability for loss of any Client Materials. Accordingly, Client shall be solely responsible for creating and maintaining current copies of all Client Materials provided to or stored by gWorks, and storing such copies in a reasonably secure location.

3.2 Client represents and warrants to gWorks that Client has obtained all necessary authorizations and/or licenses to provide the Client Materials to gWorks and to permit

gWorks to use, reproduce, and/or modify the Client Materials, without liability to Client or any third party. Client hereby grants to gWorks a non-exclusive right and license to use, reproduce, and modify the Client Materials to the extent necessary to enable gWorks to provide the Services and develop the Deliverables.

3.3 Client shall comply with all laws and governmental regulations affecting its use of the Services and Deliverables, and gWorks shall have no responsibility therefor, including, without limitation, any responsibility to advise Client of such laws or regulations.

3.4 Client shall ensure that any hardware, applications, or software not provided by gWorks pursuant to this Agreement will function properly while using the Deliverables and Services. The failure of Client's hardware, applications, or software to so function shall not relieve Client of any of its obligations under this Agreement.

3.5 Client shall not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that appear on any software provided or licensed to Client by gWorks. Client may not reverse engineer, decompile, or disassemble any software provided or licensed by gWorks, except to the extent that the parties expressly agree in the applicable Ordering Document that Client owns all right, title, and interest in and to such software and the Intellectual Property embodied therein.

#### **ARTICLE 4: FEES AND EXPENSES**

4.1 Client shall pay gWorks for all Services and Deliverables, in the amounts, at the times, and in the manner set forth in each Ordering Document. Any payment that is past due to gWorks shall bear interest at the rate of 12% per annum or the highest rate allowed by applicable law (whichever is lower). Client shall reimburse gWorks for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any overdue amounts. Client shall pay all sales, use, value-added, excise, and other similar taxes (but specifically excluding taxes on gWorks' income) which result from, or are related to, the rendition of the Services or the providing of the Deliverables. Upon the execution of a Change Order, gWorks may require Client to pay for all Services and Deliverables completed from execution of the original Ordering Document to the execution of the Change Order. Client's failure to make any payment when due shall be considered a material breach of this Agreement.

4.2 gWorks reserves the right to change fees for its Services from time to time. gWorks will notify the Client at least thirty (30) days in advance with the renewal term invoice, and the increased fees will apply at the start of the next renewal term. If the Client does not agree to this increase, either party can choose to terminate the renewal term at the end of the Client's then-current term per the termination provisions in this Agreement or as set forth in the Ordering Document. Client's continued use of the Services beyond the cancellation window constitutes the Client's agreement to those changes.

#### **ARTICLE 5: TERM AND TERMINATION**

5.1 This Agreement shall be in effect from the Effective Date and shall continue until the end of the term of the last Ordering Document or until terminated in accordance with the provisions set forth in this Agreement. An Ordering Document shall be in effect from the

effective date of such Ordering Document and shall continue for the term specified in such Ordering Document, including automatic or manual renewals of Web-Based Services or Desktop Services, or until terminated in accordance with the provisions set forth in this Agreement and such Ordering Document. Unless otherwise set forth in the applicable Ordering Document, termination of any Ordering Document shall not constitute a termination of any other Ordering Document or of this Agreement. Termination of this Agreement in accordance with the provisions set forth in this Agreement shall terminate all Ordering Documents and the Terms of Service. gWorks may terminate this Agreement immediately if it reasonably believes that Client is infringing, has infringed, or is threatening to infringe the Intellectual Property rights of any third parties, or at any time when there are no currently effective Ordering Documents. This Agreement or any Ordering Document may be immediately terminated, in writing, by either party as follows: (a) if the other party breaches any material provision hereof or the applicable Ordering Document and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party; or (b) upon dissolution, insolvency, or any adjudication in bankruptcy of, or any assignment for the benefit of creditors by, the other party.

5.2 Termination of Desktop Services. gWorks may terminate the rights of Client under this Agreement in the event of a default by Client. gWorks' software has been designed to cease functioning in the event that the annual license fee is unpaid. Client acknowledges the existence of this feature in the software and specifically waives any claim for consequential damages, which may result. In the event of default, all unpaid Annual License Fees, product support-related fees, and any other charges payable for the entire duration of this Agreement shall, upon written notice by gWorks become due and payable. This remedy shall be in addition to any other remedy lawfully available to gWorks. In the event of termination by gWorks or by Client (as herein provided) Client shall return the program and all related materials within ten (10) days, (as provided in paragraph seven), certifying to gWorks that all copies or partial copies have been destroyed. Client shall remain liable for all unpaid charges required to be paid under this Agreement including; unpaid Annual License Fees and product-support-related fees, notwithstanding such termination. Default in respect to payment shall mean the Client's failure to pay any amount, which is past due, within ten (10) days after written notice to Client that the payment is delinquent. Default is further defined to include the following: an assignment, sale, mortgage, sublease or sublicense of the program by Client; levy of execution or attachment upon the program or any attempt to levy the same; breach of any proprietary right of gWorks (as defined by paragraph seven); of Client's breach of any of the other terms or conditions hereof. In the event of breach of default of this Agreement, Client shall hold gWorks' harmless from all reasonable attorney's fees, costs and interest (at the highest rate permitted by law) arising by reason of such breach or default, from the date of the default or breach, in addition to other damages. Client shall have the right to terminate this Agreement upon thirty-(30) days written notice. In such event, Client shall be required to return the program and related materials as provided herein and shall be responsible to pay all charges required to be paid under this Agreement for the duration of the license. Client shall not have the right to terminate after Client is in breach of this contract. gWorks shall not be required, under any circumstances, to refund

any portion of the implementation or onboarding fees, the Annual License Fee, or the product support-related fees, already paid.

5.3 Termination of Web-Based Services. See Terms of Service.

5.4 Upon termination of this Agreement for any reason: (a) Client shall immediately pay all outstanding amounts it owes to gWorks hereunder; (b) Client shall immediately cease using all terminated Services; (c) gWorks may take steps to change, remove, or otherwise block Client's access to any and all Services; and (d) upon payment in full of the fees owed to it, gWorks shall deliver to Client any Deliverables, in their current form as of the effective date of termination, along with all documentation, Specifications, Client Materials and programming language in gWorks' possession. Notwithstanding the above, if, within thirty (30) days after the termination of this Agreement, or any Services, Client requests to export any data files, gWorks shall export such data files to Client, and such services will be charged at gWorks then-standard rates. Unless otherwise specified in the applicable Ordering Document, Client shall reimburse gWorks for the costs of all non-cancelable products or services procured from third parties in connection with gWorks' performance of the Services. The provisions of Articles 1, 4, 8, and 9, along with Sections 3.3, 5.2, 5.4, 10.1, 10.2, 10.4, 10.5, 10.6, 10.7, 10.9, and 10.10 of this Agreement shall survive the termination of this Agreement, to the extent applicable.

**ARTICLE 6: INTELLECTUAL PROPERTY**

6.1 gWorks is the exclusive owner of all right, title, and interest in and to all Intellectual Property embodied in the Deliverables, the Services, and the Specifications, and any modifications, enhancements, improvements, and derivative works therein or thereto, as well as any other Intellectual Property developed in the course of gWorks' performance under this Agreement. Client shall not take any action that weakens, deters, or otherwise negatively impacts gWorks' rights in its Intellectual Property. Client hereby assigns any and all rights it may be deemed to own in gWorks' Intellectual Property to gWorks. For purposes of clarification, upon payment in full by Client for all Deliverables and Services, Client shall own title to the Deliverables themselves, notwithstanding the fact that no proprietary rights shall accrue to Client in any Intellectual Property embodied therein or associated therewith, and Client may use such Deliverables as it sees fit, subject to Client's full and continued compliance with the terms and conditions of this Agreement. The Client will retain ownership of the Intellectual Property embodied in any Client Materials that are incorporated into such Deliverable, as such Client Materials exist at the time Client discloses or provides them to gWorks hereunder, and no proprietary rights shall accrue to gWorks in such Client Materials. Except as expressly set forth in this Agreement, nothing in this Agreement shall transfer any right, title, or interest in any of either party's Intellectual Property.

6.2 In performing a Service or developing a Deliverable, gWorks may use certain third party technology set forth in the applicable Ordering Documents ("Third Party Technology"). To the extent gWorks has the right to grant licenses to such Third Party Technology, gWorks hereby grants to Client a royalty-free, non-exclusive license to use the Third Party Technology solely in connection with its use of the applicable Deliverable, subject to any limitations imposed by the owner of such Third Party Technology. gWorks

makes no representations or warranties with respect to any Third Party Technology and shall have no liability arising out of or relating to Client's use thereof.

6.3 gWorks may from time to time arrange for Client's purchase, lease, or license of third party hardware, equipment, software, services, data, or other products not owned by gWorks ("Third Party Products"). Client's use of Third Party Products is governed by the terms and conditions of any license or other agreement between Client and the third party, and Client agrees to abide by all such terms and conditions. gWorks makes no independent representations and warranties with respect to any Third Party Products and shall have no liability arising out of or relating to Client's use thereof. Any third party warranties are the exclusive remedies of Client with respect to Third Party Products.

6.4 Grant of License for Desktop Services. gWorks grants to Client a personal, non-assignable, non-transferable and non-exclusive license to use Desktop Services solely in the conduct of Client's business, only at the locations designated by Client in the Ordering Document. Client acquires only the right to use the Desktop Services and does not acquire any legal or equitable right of ownership in the Service. This Agreement and the license granted pursuant hereto may not be mortgaged, pledged, assigned, sublicensed, leased or otherwise transferred by Client without prior written consent from gWorks. Client may not reverse engineer or attempt to derive the source code of the program.

#### **ARTICLE 7: REPRESENTATIONS AND WARRANTIES**

Each party hereby represents warrants to the other that: (a) it is validly organized, in good standing, and licensed to conduct business in each jurisdiction in which the failure to do so would have a material adverse effect on such party; (b) it has all necessary corporate power and authority to enter into this Agreement, to grant to the other party all of the rights granted hereby, and to perform its obligations hereunder; (c) this Agreement is and shall remain the valid, legal, and binding obligation of such party, enforceable against it in accordance with its terms, except where enforceability may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights or by principles of equity; and (d) the execution, delivery, and performance of this Agreement does not conflict with, or result in a breach of, any agreement, written or oral, to which it is a party or by which it or its properly is bound.

#### **ARTICLE 8: DISCLAIMER; LIMITATION OF LIABILITY; INDEMNIFICATION**

**8.1 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, CLIENT'S USE OF ANY SERVICE OR DELIVERABLE IS SOLELY AT CLIENT'S OWN RISK. ALL SERVICES AND DELIVERABLES ARE PROVIDED ON AN "AS IS," AND "AS AVAILABLE" BASIS, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN. GWORKS DISCLAIMS ALL WARRANTIES OF ANY KIND PERTAINING TO THE SERVICES AND DELIVERABLES THAT ARE NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. GWORKS MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR DELIVERABLES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE**

**SERVICES OR DELIVERABLES. TO THE EXTENT ANY JURISDICTION DOES NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY.**

**8.2 GWORKS' AND ITS AFFILIATES' ENTIRE CUMULATIVE LIABILITY, AND CLIENT'S EXCLUSIVE REMEDY, IN LAW, IN EQUITY, OR OTHERWISE, FOR ALL DAMAGES AND LIABILITIES ARISING UNDER ALL CLAIMS IN CONNECTION WITH THIS AGREEMENT, ANY ORDERING DOCUMENT, OR CHANGE ORDER, REGARDLESS OF THE FORM OF ACTION (INCLUDING, BUT NOT LIMITED TO, ACTIONS FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, RESCISSION, MISREPRESENTATION AND BREACH OF WARRANTY) SHALL NOT IN THE AGGREGATE EXCEED THE FEES ACTUALLY PAID BY CLIENT TO GWORKS UNDER THE APPLICABLE ORDERING DOCUMENT IN THE SIX MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH CAUSED THE DAMAGE OR LIABILITY. IN NO EVENT SHALL GWORKS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF A STATE DOES NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY AS SET FORTH HEREIN, LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW. REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE THE SUBJECT OF A NOTICE TO GWORKS, WITHIN 1 YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE, OR SUCH CLAIM SHALL BE FOREVER BARRED.**

8.3 Each party, on behalf of itself and its respective affiliates, officers, directors, agents, and employees (collectively, the "Indemnifying Party") agrees to indemnify and hold the other party and each of its respective affiliates, officers, directors, agents, and employees (collectively, the "Indemnified Party") harmless from and against any and all liabilities, obligations, losses, damages, penalties, fines, amounts paid in settlement, interest, expenses, and disbursements of any kind and nature whatsoever (including attorneys' fees), arising out of or relating to any suit, investigation, proceeding, demand, or claim by any third party (collectively "Claims") arising out of or related to (a) a violation by the Indemnifying Party of any applicable law, rule, regulation, or court order; or (b) any personal injury (including death) or property damage caused by the gross negligence or willful misconduct of the Indemnifying Party.

#### **ARTICLE 9: CONFIDENTIALITY**

During the term of this Agreement, each party (the "Disclosing Party") may provide the other party (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes the Disclosing Party's research, financial and accounting data and projections, technical data, computer programs, customer lists and information, marketing strategies, estimated staffing requirements, know-how, any information that is marked "confidential" (or with a similar legend), any information that is orally disclosed, identified as confidential at the time of disclosure, and confirmed in writing as being confidential within 30 days thereafter, as well as any information or material which, by its nature and under the circumstances surrounding its disclosure, is generally considered proprietary and confidential, regardless of whether it is marked or properly reduced to writing. Confidential Information does not include information that (a) is publicly known at the time of its



disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party shall not use the Disclosing Party's Confidential Information except to the extent necessary to perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party's Confidential Information to those who have a need to know such Confidential Information in order for the Receiving Party to perform its obligations under this Agreement. Such persons will be informed of and will agree to the provisions of this Article 9, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. Notwithstanding the foregoing, the Receiving Party may disclose such Confidential Information if required or requested to do so by a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder. If so requested or required, the Receiving Party shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement, and upon the written request of the Disclosing Party, the Receiving Party shall return all Confidential Information of the Disclosing Party which is in its possession or under its control.

#### **ARTICLE 10: MISCELLANEOUS**

10.1 During the term of this Agreement and for a period of one year thereafter, Client shall not, directly or indirectly, solicit for employment or hire any employee of gWorks with whom Client has had contact or who became known to Client in connection with this Agreement.

10.2 gWorks acknowledges that the Nebraska Fair Employment Practices Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. sections 48-1101 to 48-1125). gWorks guarantees compliance with the Nebraska Fair Employment Practices Act, and its breach of this Section shall be regarded as a material breach of this Agreement. gWorks shall insert a similar provision in its agreements with its subcontractors.

10.3 gWorks certifies that it maintains a drug-free workplace to ensure worker safety and workplace integrity.

10.4 Any notice, consent, or other communication required or permitted hereunder shall be in writing. It shall be deemed given when (a) delivered personally, (b) sent by confirmed fax or e-mail, (c) sent by commercial overnight courier with written verification of receipt, or (d) sent by registered or certified mail, return receipt requested,

postage prepaid, and the receipt is returned to the sender. Names, addresses, and fax numbers for notices (unless and until written notice of other names, addresses and fax numbers are provided in accordance with the provisions of this Section) are listed on the signature page to this Agreement.

10.5 Except as expressly stated herein, the remedies provided to the parties under this Agreement shall be cumulative and non-exclusive.

10.6 This Agreement shall be construed, interpreted, and enforced according to the laws of the State of Nebraska, without giving effect to the conflicts of law principles thereof. Any dispute arising under this Agreement will be first referred for resolution to each party's respective management designee. To the extent that the designees of the parties cannot resolve the dispute within a reasonable period of time, the parties shall consider in good faith trying to settle the dispute by non-binding mediation and/or engaging in binding arbitration. Any and all mediation and arbitration hearings shall be held in Lincoln, Nebraska, unless the parties agree otherwise. All such arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a panel of three neutral arbitrators, one selected by each party and the third (who will be the chair of the panel) selected by the other two arbitrators. The award or decision rendered by the panel (including an allocation of the costs of arbitration) will be final and binding, and judgment may be entered upon such award by any court of competent jurisdiction. Neither party shall initiate litigation with respect to any dispute until at least ninety (90) days after notice of the dispute is first given or received. In the event litigation is pursued, each party, for itself and its successors and assigns, hereby expressly and irrevocably (a) consents to the exclusive jurisdiction of the state and federal courts of the State of Nebraska, (b) waives any objection based on forum non conveniens or any objection to venue of any such action, and (c) waives any rights it may have to a jury trial.

10.7 The parties acknowledge that gWorks is an independent contractor with respect to Client. Nothing contained herein shall be construed as creating any agency, partnership, joint venture, or employment relationship between gWorks and Client. Client will not supervise gWorks. gWorks shall pay all taxes due and payable on the payments received from Client in accordance with federal, state, and local law. Client shall not withhold or pay any federal, state, or local income tax, or any other payroll tax of any kind, on behalf of gWorks. gWorks not eligible for, nor entitled to, and shall not participate in, any of Client's fringe benefit plans.

10.8 gWorks may assign this Agreement in the event of a sale of all or substantially all its assets or a merger, consolidation, or change in control of a majority of its outstanding voting shares. Otherwise, except as otherwise provided herein, neither party may assign its rights or obligations under this Agreement without the other party's prior written consent, which consent may be withheld or conditioned at the discretion of the non-assigning party. gWorks may not subcontract the performance of its obligations hereunder, in whole or in part, without the Client's prior written consent, which consent will not be unreasonably withheld or delayed.

10.9 This Agreement, including all applicable Ordering Documents, Change Orders, the Terms of Service (if applicable), and any other addenda (all of which are incorporated herein by this reference) contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede any and all prior or contemporaneous discussions, negotiations, agreements, or understandings between the parties, whether written or oral, regarding the subject matter hereof. Except as otherwise provided herein, no waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment, or modification is sought to be enforced. In the event of any conflict between the provisions of this Agreement and any Ordering Document, the Terms of Service, or any other addenda, the provisions of this Agreement will control, provided, however, the provisions of the Ordering Document will control if (i) the Ordering Document specifically references this Section 10.9 and states that the provisions of the Ordering Document will control and (ii) the provision at issue in the Ordering Document does not conflict with any provision in Article 6 or Article 8 of this Agreement. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other breach by either party.

10.10 If any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, the remaining provisions of this Agreement shall remain in full force and effect. The unenforceable or invalid provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.

10.11 As used in this Agreement, "including" means "including without limitation". The words "or" and "nor" are inclusive and include "and". The singular shall include the plural and vice versa. References to "Articles," "Sections," "Ordering Documents," "SOWs" shall mean the Articles, Sections, Ordering Documents or SOWs of or attached to this Agreement, unless otherwise expressly indicated. The headings or titles preceding the text of any Article or Section are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction, or effect of this Agreement.

10.12 If either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including, without limitation, acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, utility or communication interruptions, rejection of domain name by registration company, transportation delays, power failure, computer failure, failure of Client's computer system, gWorks system downtime for routine maintenance, network problems, or telecommunications failure, the delay shall be excused during the continuance of, and to the extent of such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed.

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same Agreement. This Agreement may be

executed and delivered via facsimile, electronic mail, or other electronic transmission methods (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000), and the execution and delivery of this Agreement by such methods shall be deemed to be valid and effective for all purposes.

By signing this Agreement, the individual signing on behalf of the Client certifies and warrants that they are authorized to sign on behalf of the Client, agreements to the terms of this Agreement and any documents incorporated herein, and that, upon their signature, this Agreement and any documents incorporated herein will become legally binding agreement of the Client.

**GIS Workshop, LLC d/b/a gWorks**

**Client Name\*:**

Sign: *Joseph R. Heieck*

Sign: *Todd Teftecker*

Print Name: Joseph R. Heieck

Print Name: **TODD TEFTECKER**

Title President & CEO

Title **UPSMUR CO. JUDGE**

Date: 10/12/2022

Date: **2-10-2023**

Address: 3905 S 148<sup>th</sup> St., Suite 200,  
Omaha, NE 68154

Address: **POBOX 730  
GILMER, TX 75644**

\*For Client Name, please use the legal name of your entity, organization, or government body. For example, City of Anytown TX; Any County MD; Anytown Water District CO; Anytown Public Utility IA.

## **EXHIBIT A: TERMS OF SERVICE**

### **GIS WORKSHOP LLC, DBA GWORKS**

THESE TERMS OF SERVICE (the "Terms of Service") are effective as of the first date on which the person or entities agreeing hereto (the "Client") executes a Statement of Work or Master Services Agreement, agreeing to be bound to these Terms of Service, or otherwise indicates its acceptance of these Terms of Service by registering for and accessing the Service (as hereinafter defined) (the "Effective Date"). These Terms of Service outline the services that the Client will receive. These Terms of Service shall be a binding agreement between Client and GIS Workshop, LLC dba gWorks ("gWorks") doing business as gWorks (each a "Party" and collectively the "Parties"). The Terms of Service govern the Parties' rights and obligations with respect to the provision and access of those certain web-based and/or mobile application services (the "Service") offered by gWorks on and through its website (the "Site") for personal or business use by Client (the "Purpose"). Client acknowledges that it has read these Terms of Service carefully before

accessing or using the Site or the Service and agrees to be bound by the terms and conditions therein. To the extent gWorks makes any material changes to these Terms of Service, it shall use commercially reasonable efforts to notify and seek Client's acceptance of such changes prior to such changes becoming effective as to Client. Capitalized terms which are used but not otherwise defined herein shall have the meanings ascribed to them in the Master Services Agreement. In the event of any conflict between the Terms of Service and the Master Services Agreement executed by the Parties, the Master Services Agreement shall control.

1. **SERVICE.** Subject to Client's continued compliance with these Terms of Service, and in consideration of gWorks granting access to Client to the Site and Service in accordance with the terms hereof and the Subscription Fee (as defined below) paid by Client hereunder, gWorks grants to Client, and Client hereby accepts, pursuant to the terms and conditions set forth herein, a non-exclusive, non-transferable, non-sublicensable right and subscription to use and access the Service through the Site, solely in connection with the Purpose. All features, content, specifications, Site Deliverables, data, and layout of the Service described or depicted on, or generated through, the Site are subject to change.
2. **THIRD PARTY PRODUCTS.** Client acknowledges that the Service may include access to third party software, services, and data (collectively, "Third Party Products"). By accessing the Service, Client is agreeing to be bound by each of these third party's terms with respect to their own software, services, and data. gWorks makes no independent representations or warranties with respect to any Third-Party Products and shall have no liability arising out of or relating to Client's use thereof.
3. **SCOPE OF SUBSCRIPTION RIGHTS.** The rights granted by gWorks to Client for the Service are personal to Client and allow Client to use and access the Service and any Site Deliverables (as defined below) generated through the Service for its own personal or business use, for public access (allowing the public to use any available computers or mobile devices to obtain access), on its own computer or mobile device, and strictly for the Purpose. Except as otherwise provided herein, these subscription rights may not be shared by more than one individual or assigned to new users without the consent of gWorks, which may be withheld in gWorks' sole and absolute discretion.
4. **FEES AND PAYMENT TERMS.**

(a) In consideration for gWorks granting Client access to the Service, Client agrees to pay to gWorks a non-refundable subscription fee in the amount and on the terms set forth in the Ordering Documents (the "Subscription Fee"), which shall be charged in accordance with the Ordering Documents.

(b) Unless otherwise agreed to by the parties, Client shall be initially charged the Subscription Fee on the Effective Date. Client shall register for the Service either through the execution of an Ordering Document with gWorks, or through accessing the Service electronically. Upon registration, Client may submit credit card information for the account that will be automatically charged for the Subscription Fee. Alternatively, gWorks may issue an invoice to Client for payment by Client in accordance with the terms of such invoice. The Subscription Fees shall be processed on a reoccurring basis by gWorks and

either automatically charged to Client's credit card or through an issued invoice, which shall be payable by Client in accordance with its terms and the applicable terms of the Ordering Document.

(c) In the event that gWorks elects to allow for payment by credit card, gWorks may use a third-party intermediary to manage credit card processing, and this intermediary will not be permitted to store, retain or use Client's billing information except to process Client's credit card information for gWorks. gWorks' handling of Client's personal information shall be in accordance with gWorks' privacy policies and practices, which will be provided to Client upon request or is available here: <https://www.gworks.com/privacy-policy/>.

(d) If Client's credit card payment information is entered in error or if payment does not go through for processing and Client fails to update or correct such payment information upon gWorks' request, gWorks may immediately terminate these Terms of Service and suspend Client's account without notice. In the event of any termination or suspension hereunder, Client will still have access to those portions and features of the Service that are made available to Client for no charge.

(e) The Subscription Fee does not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state or federal jurisdiction that may be levied upon the Service or Client's use of the Site. If taxes should be imposed on any of the foregoing, Client will pay all such taxes (excluding taxes imposed on or measured by gWorks' income) and hold gWorks harmless for the payment of any and all such taxes.

(f) Upon term renewal, gWorks may increase the Client's annual Subscription Fees up to gWorks then-current list price or for changes to the Consumer Price Index. gWorks will notify the Client at least thirty (30) days in advance with the renewal term invoice, and the increased fees will apply at the start of the next renewal term. If the Client does not agree to this increase, either party can choose to terminate the renewal term at the end of the Client's then-current term per the termination provisions in this Agreement or as set forth in the Ordering Document.

**5. CLIENT MATERIALS.** Client acknowledges and agrees that, in order for Client to fully utilize certain portions of the Service, Client must input certain Client Materials into the Service via the Site or via the gWorks. By doing so, Client is not relinquishing any of its ownership or rights in and to such Client Materials. However, Client hereby grants to gWorks, and gWorks hereby accepts, a non-exclusive, sublicensable, perpetual, worldwide license to use, host, reproduce, store, enhance, supplement and otherwise distribute the Client Materials in any and all ways necessary for gWorks to provide to Client the Service, to generate the Site Deliverables, and for all other legitimate business purposes of gWorks related to the Service or Site (or with respect to gWorks' other legitimate business needs). Client, not gWorks, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of all Client Materials, and gWorks shall not be responsible or liable for the deletion, correction, inaccuracy, destruction, damage, loss or failure to store any Client Materials. Client acknowledges and agrees that gWorks is not responsible for examining or evaluating and makes no guarantees regarding the accuracy, completeness, timeliness, validity, legality,

decency, quality or any other aspect of the Client Materials, and gWorks shall have no liability to Client or any third party for its use of or reliance on the Client Materials. gWorks reserves the right to remove and/or discard Client Materials upon thirty (30) days written notice to the Client. If the Client does not claim the Client Materials or make arrangement to do so within thirty (30) days of gWorks providing the written notice to the Client, gWorks may remove and/or discard the Client Materials. gWorks will, upon request, provide Client with access to the Client Materials during the Term of these Terms of Service, in a form reasonably agreed to by gWorks and Client. The parties agree that gWorks will provide notice to the Client of any Client Materials of which it has possession upon termination of these Terms of Service. gWorks will maintain any such Client Materials for a period of thirty (30) days following termination of the agreement. If the Client or another representative of the State of Nebraska does not claim or make arrangements to claim the Client Materials within thirty (30) days after the notice, gWorks has no further obligation to maintain any Client Materials.

**6. SITE DELIVERABLES.** As part of the Service, gWorks may generate certain data, reports, studies, charts, presentations or other deliverables (collectively, the "Site Deliverables"). While gWorks makes extensive efforts to present accurate and up to date Site Deliverables, Client acknowledges that such Site Deliverables rely largely on the accuracy and currency of the third party data used by gWorks in connection therewith. Thus, gWorks makes no representations or warranties as to the Site Deliverables, and the Parties acknowledge that the Site Deliverables may be inaccurate, incomplete, unreliable or out of date. Client should independently verify the accuracy, completeness and relevance of any information it receives from gWorks as part of a Site Deliverable before relying on it for any purpose of material impact. gWorks is not responsible for damages from lost profits, loss of business or any other losses arising out of Client's use of or reliance on the Site Deliverables, Service or Site.

**7. SERVICE RESTRICTIONS.** Client agrees it will not: (a) rent, lease, license, loan, transfer, assign, sell, copy, sublicense, commercialize, distribute or otherwise use or provide access to the Site, the Service or Site Deliverables, or the underlying software used therein, in whole or in part, on a temporary or permanent basis, except as expressly permitted by these Terms of Service; (b) use the Service, the Site Deliverables, the underlying software used therein, or any portion thereof to create any tool, application or software product that can be used to create software applications of any nature whatsoever; (c) Use the Service, Site Deliverables, or the Site in any unlawful manner whatsoever; (d) Remove, alter, cover, obfuscate, and/or otherwise deface any proprietary notices on the Site or the Site Deliverables; (e) Access the Service by any means other than through the Site; (f) Spider, data-mine, scrape, probe or otherwise attempt to abuse the Site or Service; or (g) Modify, alter, adapt, copy, decompile, disassemble, reverse engineer, reverse assemble or emulate the functionality, reverse compile, attempt to derive the source code of, reduce to human readable form, or create derivative works of the Service, the Site or the underlying software used therein, in whole or in part.

**8. REGISTRATION.** Prior to Client being able to access the Service, Client may be required to register for the Service on the Site. Alternatively, Client may register for the Service by executing a written agreement (i.e. a Master Agreement or Ordering Document) with gWorks in the form provided to Client by gWorks. As part of the registration process, Client will be required to provide certain information, and may be awarded a username and password. Client shall remain responsible for maintaining the security of its account, including its username and password, and shall not disclose it to any third party except as

authorized herein. gWorks will not be responsible or liable for any loss or damage caused by Client's failure to comply with its security obligation. Client remains responsible for all activity occurring under its accounts, and shall notify gWorks immediately of any unauthorized use of any password or account or any other known or suspected breach of security.

#### **9. SUPPORT, MAINTENANCE AND UPGRADES.**

(a) Provided Client is not in breach of these Terms of Service, and provided these Terms of Service remain in effect, gWorks will provide general support services related to the Service during the hours of 8:00 AM through 5:00 PM, CST, Monday through Friday (not including holidays). This schedule may change from time to time, as determined by gWorks in its sole discretion. General support services will include email communication during the time frame described above. Any support services beyond those described herein, or any support services provided outside of the time frame described above, may be provided by gWorks at gWorks' sole and absolute discretion, and upon terms determined by gWorks.

(b) Client understands and acknowledges that gWorks has the right to modify and update (or refrain from modifying and updating) the Site and Service at any time, provided however, that gWorks will notify Client of any material changes in the existing functionality or capabilities of the Service. Updates and improvements provided as part of gWorks' general maintenance services shall be made in gWorks' sole and absolute discretion. gWorks shall be under no obligation to provide any updates, improvements or enhancements. All right, title and interest to upgrades, enhancements, and special programming shall vest in and belong to gWorks. Client specifically acknowledges that some additional services or upgrades may be developed for the Service, for which gWorks may require the payment of additional fees or other terms and conditions in order for Client to be entitled to use such additional services or upgrades, which services or upgrades shall not be deemed to be Services hereunder absent payment of such fees or compliance with such conditions.

#### **10. BACKUP; DISASTER RECOVERY; SECURITY.**

(a) gWorks agrees to maintain, through itself or through third party service providers, backup and disaster recovery facilities sufficient to permit it to recover and make available to Client under these Terms of Service the Site, Service, Site Deliverables, and Client Materials within forty eight (48) hours of any system failures or data loss.

(b) gWorks shall maintain adequate security precautions to minimize the likelihood of any unauthorized access through the Internet to Client Materials or other data provided by Client to gWorks through the Site, including, among other things, the use of a secure server, protective firewalls and encryption.

**11. OWNERSHIP OF INTELLECTUAL PROPERTY.** Except with respect to the Client Materials, which gWorks acknowledges is the property of Client, Client acknowledges that gWorks and/or the third party sources of gWorks' information are the owners of all right, title and interest in and to all Intellectual Property in the Service, the Site, Site Deliverables, Third Party Products and the underlying software used therein, in any form whatsoever, including: a) the technology available as part of or embodied in the Service;



and b) all content, including but not limited to text, software, music, sound, photographs, video, graphics, plots, typeset formulas, tables, general page layouts, juxtapositions of data or other material contained in the Site, the Site Deliverables or otherwise provided as part of the Service. Client acknowledges that the Site, the Service, the Site Deliverables, and any other products or services offered by gWorks are protected by United States and international copyrights, patents, trademarks, service marks, trade secrets or other proprietary and intellectual property rights and laws, as applicable. Client acknowledges that it claims no proprietary rights in any Intellectual Property of gWorks, the Site, the Site Deliverables, the Service, or Third Party Products, and will be entitled to only such rights as are granted to Client pursuant to any and all agreements between gWorks and Client. The Site, the Site Deliverables, and the Service may be used only in accordance with the terms and conditions of these Terms of Service. All pending and/or registered trademarks and service marks, and other graphics, logos, and trade names used by gWorks in connection with the Site, the Site Deliverables, and the Service, and any other products or services offered by gWorks (collectively the "gWorks Trademarks") are the trademarks of gWorks or its content providers. gWorks and Client acknowledge that, in the event of any third party claim that the Site, the Site Deliverables, or the Service infringes such third party's Intellectual Property Rights, gWorks will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim, subject to these Terms of Service. For purposes of clarification, upon payment in full by Client of all applicable Subscription Fees, Client shall own the Site Deliverables themselves, notwithstanding the fact that no proprietary rights shall accrue to Client in any Intellectual Property embodied therein or associated therewith, and Client may use such Site Deliverables as it sees fit, subject to Client's full and continued compliance with the terms of conditions of these Terms of Service.

#### **12. CANCELLATION, TERM AND TERMINATION.**

(a) **Term.** These Terms of Service shall become effective as of the Effective Date and shall continue in effect for the period of time set forth in the Ordering Document, unless and until terminated in accordance with these Terms of Service or upon termination of the Master Agreement entered into between the parties (collectively, the "Term"). Termination of these Terms of Service will not terminate the Master Agreement between the parties, but termination of the Master Agreement will automatically terminate these Terms of Service.

(b) **Termination.** These Terms of Service may be immediately terminated, in writing, by either Party as follows: (a) if the other Party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching Party; (b) upon dissolution, insolvency, or any adjudication in bankruptcy of, or any assignment for the benefit of creditors by, the other Party.

(c) **Effect of Termination.** Upon termination of these Terms of Service for any reason, Client shall immediately cease any use of the Service, any Site Deliverables that have not been personally delivered to Client, and the Site. All fees otherwise due and payable shall be immediately paid. Annual fees are nonrefundable.

#### **13. MUTUAL REPRESENTATIONS AND WARRANTIES.** Each Party represents and warrants as follows:

(a) It has all necessary power and authority to enter into these Terms of Service, to grant to the other Party all of the rights granted hereby and to perform its obligations hereunder;

(b) The Terms of Service are and shall remain the valid, legal and binding obligation of such Party, enforceable against it in accordance with its terms, except where enforceability may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights or by principles of equity; and

(c) The execution, delivery and performance of these Terms of Service does not conflict with or result in a breach of, any agreement, written or oral, to which it is a party or by which it or its property is bound.

**14. LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROVIDED HEREIN, IN NO EVENT SHALL GWORKS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AND EVEN IF ANY OF THE LIMITED REMEDIES OF THESE TERMS OF SERVICE FAIL TO FULFILL ITS ESSENTIAL PURPOSE. SUBJECT TO "16 INDEMNITY" OF THESE TERMS OF SERVICE, GWORKS SHALL NOT BE LIABLE TO CLIENT FOR ANY BREACH OF SECURITY ON THE SITE, REGARDLESS OF WHETHER ANY REMEDY PROVIDED IN THESE TERMS OF SERVICE FAILS ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL GWORKS' AGGREGATE LIABILITY FOR DAMAGES UNDER THESE TERMS OF SERVICE CLAIMED BY CLIENT OR ANY THIRD PARTY ARISING FROM CLIENT'S USE OR RELIANCE ON THE SITE, SERVICE OR SITE DELIVERABLES EXCEED PAYMENTS MADE BY CLIENT TO GWORKS DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO CLIENT.

**15. NO WARRANTY.** CLIENT AGREES TO USE THE SERVICE, THE SITE DELIVERABLES AND THE SITE AT ITS SOLE RISK, AND GWORKS SHALL HAVE NO LIABILITY TO CLIENT OR ANY THIRD PARTY FOR ITS USE OR ACCESS OF OR RELIANCE ON THE SERVICE, THE SITE, OR THE SITE DELIVERABLES. CLIENT RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND THEREFORE ARE NOT SUBJECT TO THE CONTROL OF GWORKS. CLIENT ALSO ACKNOWLEDGES THAT COMPUTER SYSTEMS ARE INHERENTLY UNSTABLE AND MAY MALFUNCTION OR CEASE TO FUNCTION AT ANY TIME WITHOUT WARNING. MALFUNCTION OR CESSATION OF INTERNET SERVICES BY INTERNET SERVICE PROVIDERS OR OF ANY OF THE NETWORKS THAT FORM THE INTERNET MAY MAKE THE SERVICE OR SITE TEMPORARILY OR PERMANENTLY UNAVAILABLE. THE SERVICE, THIRD PARTY PRODUCTS, SITE DELIVERABLES, SITE, INTELLECTUAL PROPERTY AND ANY RELATED PRODUCTS AND SERVICES ARE SUPPLIED TO CLIENT "AS IS." NEITHER GWORKS NOR ANY THIRD PARTY INFORMATION OR SERVICE PROVIDER OF GWORKS GIVES ANY WARRANTIES, EXPRESS OR IMPLIED, RELATED THERETO, EXCEPT AS EXPRESSLY PROVIDED HEREIN. GWORKS DISCLAIMS, AND CLIENT EXPRESSLY WAIVES, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, EXCEPT AS OTHERWISE SET FORTH IN SECTIONS 2.1 AND 2.2 OF THE MASTER SERVICES AGREEMENT, NEITHER GWORKS NOR ANY THIRD PARTY INFORMATION OR SERVICE PROVIDER OF GWORKS MAKES

**ANY WARRANTIES THAT (A) THE SERVICE WILL MEET CLIENT'S REQUIREMENTS, (B) THE SERVICE OR SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE, SITE DELIVERABLES OR SITE WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, SITE DELIVERABLES, INFORMATION OR OTHER MATERIAL RECEIVED OR OBTAINED BY CLIENT THROUGH THE SERVICE, SITE DELIVERABLES OR SITE WILL MEET CLIENT'S EXPECTATIONS, OR (E) ANY ERRORS IN THE SOFTWARE USED TO OPERATE THE SERVICE AND SITE WILL BE CORRECTED. ANY MATERIALS DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE OR SITE, INCLUDING THE SITE DELIVERABLES, ARE ACCESSED AT CLIENT'S OWN DISCRETION AND RISK, AND CLIENT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. FURTHER, THE SERVICE, THE SITE AND DATA MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, GWORKS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.**

**16. INDEMNITY.** Each party, gWorks and Client, on behalf of itself and its respective affiliates, officers, directors, agents, and employees (collectively, the "Indemnifying Party") agrees to indemnify and hold the other party and each of its respective affiliates, officers, directors, agents, and employees (collectively, the "Indemnified Party") harmless from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, amounts paid in settlement, interest, expenses and disbursements of any kind and nature whatsoever (including attorneys' fees, court costs, accountants' fees and fees of expert witnesses, which shall be paid as incurred), arising out of, resulting from, relating to, in the nature of or caused by any suit, investigation, proceeding, demand or claim by any third party (collectively "Claims"), arising out of or related to (a) a violation by the indemnifying Party of any applicable rule, law, regulation, court order or decree or other like item; or (b) any personal injury (including death) or property damage arising out of, resulting to, in the nature of or caused by the gross negligence or willful misconduct of the Indemnifying Party, its officers, directors, agents or employees.

**17. CONFIDENTIALITY.** During the Term of these Terms of Service, gWorks may provide the Client with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes, but is not limited to, the Site Deliverables, all code, inventions, techniques, algorithms, know-how and ideas, all business, financial and technical trade secrets, any written information which is marked "Confidential," any information which is orally disclosed, identified as confidential at the time of disclosure and confirmed in writing as being confidential within thirty (30) days thereafter, as well as any information or material which, by its nature and under the circumstances surrounding its disclosure, is generally considered proprietary and confidential, regardless of whether it is marked or properly reduced to writing. However, "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure or becomes publicly known thereafter through no fault of the Client; (b) is lawfully received by the Client from a third party not under an obligation of confidentiality to the gWorks, (c) is published or otherwise made known to the public by the gWorks, or (d) was generated independently by the Client before disclosure by the gWorks. The Client will refrain from using the gWorks' Confidential Information except to the extent necessary to exercise its rights or perform its obligations under these Terms of

Service. The Client will likewise restrict its disclosure of the gWorks' Confidential Information to those who have an absolute need to know such Confidential Information in order for the Client to perform its obligations and enjoy its rights under these Terms of Service. Such persons will be informed of and will agree to the provisions of this Section 17 and the Client will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them.

**18. FORCE MAJEURE.** Neither Party shall be liable for damages hereunder for a delay or failure in its performance of any obligation under these Terms of Service as a result of causes beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism, labor disputes, lockouts, embargoes, insurrection, riots, inability to obtain materials or labor due to governmental acts, rules, regulations or directives, utility or communication interruptions, transportation delays, power failure, computer failure, breakdown of machinery, accidents, fires, floods or other natural disasters (each a "Force Majeure Event"). Upon the giving of prompt written notice to the other Party of a Force Majeure Event, the time of performance by the Party so affected shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause.

**19. LINKS TO THIRD PARTY SITES.** The Site and Services may include links that will take Client to other sites outside of the Site ("Linked Sites"). The Linked Sites are provided by gWorks to Client as a convenience and the inclusion of the links do not imply any endorsement by gWorks of any Linked Site. gWorks has no control of the Linked Sites and Client therefore acknowledges and agrees that gWorks is not responsible for the contents of any Linked Site, any link contained in a Linked Site or any changes or updates to a Linked Site. Client further acknowledges and agrees that gWorks is not responsible for any form of transmission (e.g. webcasting) received from any Linked Site.

**20. GENERAL INFORMATION.**

(a) Client will be responsible for providing any hardware, devices or applications necessary to access the Site, Service, Site Deliverables and Client Materials and to otherwise make the Client Materials available to gWorks in order to permit it to provide the Service or access the Site.

(b) These Terms of Service shall be governed by Section 10.6 of the Master Services Agreement when the parties have a dispute.

(c) If Client should have any questions, complaints or claims with respect to the Service, such questions, complaints or claims should be directed to:

GIS Workshop, LLC dba gWorks  
Client Success Department  
3905 S. 148th St., Ste 200, Omaha, NE 68144  
info@gworks.com  
(888) 608-7666

(d) These Terms of Service may not be assigned or transferred by Client without the express written consent of gWorks, which may be granted or withheld in gWorks' sole discretion. These Terms of Service may not be assigned or transferred by gWorks without the express written consent of Client which may be granted or withheld in Client's sole

discretion, provided, however, that gWorks may assign these Terms of Service in the event of a sale of all or substantially all of its assets or a merger, consolidation or change in control of a majority of its outstanding voting shares without the express written consent of Client.

(e) The words “or” and “nor” are inclusive and include “and.” “Including” means “including without limitation” and does not limit the preceding words or terms. The singular shall include the plural and vice versa. References to “Sections” shall mean the Sections of the Terms of Service, unless otherwise expressly indicated. The headings or titles preceding the text of the Sections are inserted solely for convenience of reference, and shall not constitute a part of these Terms of Service, nor shall they affect the meaning, construction or effect of the Terms of Service.

(f) These Terms of Service constitute the entire agreement of the Parties regarding the subject matter herein and supersede all prior or contemporaneous agreements, understandings or communications between the parties, whether written or oral. Except as provided in the Agreement, these Terms of Service may not be amended, modified, qualified or otherwise changed or altered except in writing executed by an authorized signatory of each Party hereto.

(g) No agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by these Terms of Service.

(h) If any provision of these Terms of Service or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable, the remainder of these Terms of Service shall be valid and enforceable to the extent permitted by applicable law. In such event, the Parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any deviation by either Party from the terms and provisions of these Terms of Service in order to comply with applicable laws, rules or regulations shall not be considered a breach of these Terms of Service. The provisions that expressly or by their nature survive the termination of these Terms of Service, or those provisions that will not be fully performed upon termination or expiration of these Terms of Service, shall survive the termination or expiration of these Terms of Service, as applicable.

(i) Client shall comply with all applicable laws, rules, and regulations with respect to the performance of its obligations hereunder and otherwise with respect to its access and use of the Site and Service, including all applicable laws regarding the transmission of technical data exported from the United States or the country in which Client resides.

(j) The terms that, either expressly survive the termination of these Terms of Service or by their nature will not fully be performed during the Term, including but not limited to Sections 11, 12(c), 14, 15, 16, 17, 20(b) and this Section 20(j), shall survive the termination or expiration of these Terms of Service.

## **21. ADDITIONAL TERMS AND CONDITIONS FOR ACH TRANSACTIONS.**

(a) **General.** This Section 21 shall only apply to the automated clearing house (“ACH”) services provided by or on behalf of gWorks, which may include payroll processing, payroll tax payments, direct deposit services for employees, and contractor and vendor payments, as incorporated as features of products and services offered by gWorks as part of the human resources hub (“HR Hub”) and the finance hub (“Finance Hub”) (collectively “ACH Services”). By subscribing to, accessing or using the ACH Services, Client agrees to be bound by this Section 21, in addition to all other provisions of these Terms of Service, and any additional terms, conditions, rules or policies that are provided to Client in connection with the ACH Services. To receive the ACH Services, Client may need to agree to additional terms and conditions and complete and sign additional forms or authorizations that gWorks or third parties provide to Client.

(b) **ACH Account.** The ACH Services will enable Client to enter, approve and submit Client Materials, including but not limited to payroll and accounts payable information, for creation, formatting, and transmission of credit and debit entries (“Entries”) in accordance with the National Automated Clearing House Association Operating Rules & Guidelines, as the same may be amended from time to time (the “NACHA Rules”), and for gWorks to process such Client Materials and Entries. Entries will be initiated by gWorks out of Client’s designated account (the “Account”) at Client’s financial institution (“Bank”), and credited to the account(s) designated by Client, in accordance with the Entry and payment instructions provided by Client, these Terms of Service and the Master Services Agreement. If Client desires gWorks to upload into the Services Client’s Bank and Account information, then gWorks may, in its sole discretion, but is not required to, upload Client’s Bank and Account information into the Services, and such services will be charged at gWorks then-standard rates. gWorks may use the Client Materials provided by Client for all legitimate business purposes of gWorks related to the ACH Services.

(c) **Required Information.** Prior to the provision of the ACH Services, Client must submit the completed and executed documents gWorks requires for providing the ACH Services, including Client’s payroll, employee, Bank, and Account documents, any required federal, state, or local powers of attorney, and any additional documents or information requested by gWorks. The ACH Services provided will be based on and are dependent upon the Client Materials provided to gWorks by Client (including proof of federal, state, and local tax identification numbers). Failure to provide the required Client Materials and documents may adversely impact gWorks’ ability to perform the ACH Services.

(d) **Entries.** gWorks may reject any Entry which does not comply with the requirements in these Terms of Service, the Master Services Agreement, or NACHA Rules, or with respect to which the Account does not contain sufficient available funds to process the applicable Entry. gWorks will have no liability to Client for the rejection of any Entry or any Claims directly or indirectly arising therefrom. If Client requests that gWorks corrects any Entries on Client’s behalf, gWorks may attempt to do so; provided, however, that gWorks is not obligated to make any requested correction, and gWorks is not liable for any Claims or other consequences that may directly or indirectly result from gWorks’ attempt to correct, or failure to correct, such Entries. Client acknowledges that if sufficient funds are not available in the Account for gWorks to process an Entry, (i) Client will immediately become solely responsible for all tax deposits and filings, all employee wages, all Client third-party payments (e.g., customer and vendor payments) and all related penalties and interest due then and thereafter, (ii) any and all ACH Services may, at gWorks’ option, be immediately terminated, and (iii) gWorks will not have any further obligation to Client or any third party with respect to any such ACH Services.

**(e) Client Representations and Warranties.** Client, as an Originator (as defined in the NACHA Rules), makes the following representations, warranties, covenants, certifications, authorizations and acknowledgments:

(1) Client (a) agrees to be bound by and warrants it will comply with the NACHA Rules, (b) warrants it will not submit Entries that violate the laws of the United States, (c) warrants it will comply with all U.S. laws, rules and regulations, including, as applicable, laws, rules and regulations applicable to IAT Entries (including those of the Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network), (d) acknowledges and agrees that gWorks shall have the right to audit Client's compliance with the provisions of these Terms of Service, the Master Services Agreement and the NACHA Rules, and (e) acknowledges and agrees that gWorks shall have the right to suspend or terminate initiating ACH Services immediately upon notice to Client in the event Client breaches any of the NACHA Rules, these Terms of Service or the Master Services Agreement;

(2) Client (a) certifies that it has not been suspended and does not appear on a National Association list of suspended Originators, and (b) warrants that it will not transmit any Entry if it has been suspended or appears on a National Association list of suspended Originators;

(3) Client authorizes gWorks to initiate Entries on behalf of Client to its Receivers' (as defined in the NACHA Rules) accounts and Client agrees to be financially responsible to the Bank (i.e. the Originating Depository Financial Institution as defined in the NACHA Rules) for all Entries initiated by gWorks on Client's behalf;

(4) Client acknowledges and agrees that gWorks and the Bank (a) may restrict certain types of Entries, (b) shall have the right to reject any Entry or series of Entries, and (c) shall have the right to reverse Erroneous Entries (as defined in the NACHA Rules);

(5) Client represents, warrants and certifies that (a) prior to submission, each Entry has been properly authorized by Client and the Receiver in accordance with the NACHA Rules, and that (i) the authorization has not been revoked, (ii) these Terms of Service and the Master Service Agreement have not been terminated, (iii) Client has no knowledge of the revocation of the Receiver's authorization or termination of the agreement between the Receiver and the RDFI concerning the Entry, and (iv) at the time the Entry is processed by a RDFI (as defined in the NACHA Rules), the authorization for that Entry has not been terminated, in whole or in part, by operation of law, (b) Client will retain all authorizations for a minimum of two (2) years following termination or revocation of the authorization, and (c) Client will provide a copy of such authorization to gWorks upon request;

(6) Client represents, warrants and certifies that (a) all Client Materials for credit and debit Entries will be accurate and timely, and (b) each Entry will contain all information required by the NACHA Rules for specific Entry types, including, but not limited to, the Receiver's correct account number, dollar amount of the Entry, Client's Name, Client's Entry description;

(7) Client acknowledges and agrees that (a) Client shall be responsible for promptly detecting and correcting any errors, (b) any Entry or Client Materials sent to gWorks that identifies the Receiver inconsistently by name and account number may be processed by Bank based solely on the account number provided, and (c) gWorks is authorized to take such measures as gWorks deems appropriate to carry out the intent of Client in completing any particular Entry, including, but not limited to, gWorks may contact Client or may attempt to retransmit any Return Entry (as defined in the NACHA Rules);

(8) Client agrees to implement and maintain safeguards to protect against (a) any unauthorized access to confidential information being stored, processed or transmitted in connection with Entries, and (b) submission of fraudulent Client Materials or Entries purportedly on Client's behalf; and

(9) Client represents and warrants, to the extent applicable, that (a) the origination of each IAT Entry shall comply with the laws and payment systems rules of the receiving country, and (b) any submission by Client requiring initiation of an IAT Entry by gWorks shall include the name and physical address of each of Client and the Receiver, the account number of the Receiver and the identity of the Receiver's bank, bank ID number and bank branch code.

**(f) Disclaimers.** In gWorks' performance of the ACH Service, Client acknowledges and agrees that (i) gWorks is not acting in a fiduciary or trustee capacity for Client or its employees or independent contractors, and gWorks is only a facilitator (and not a party) to any Entries and payment transactions as part of the ACH Services, (ii) using the ACH Services does not relieve Client's obligations under local, state, or federal laws or regulations as related to the transactions processed as part of the ACH Services, which without limiting the generality of the foregoing shall include any payroll taxes and withholdings liabilities of Client, and (iii) gWorks solely provides a platform for the ACH Services, gWorks is not a regulated financial institution, and any information that gWorks provides in connection with the ACH Services is for informational purposes only and should not be construed by Client as legal, tax, financial or accounting advice. Client shall indemnify gWorks, its affiliates, officers, directors, agents, and employees, from and against any Claims arising out of or resulting from the debiting or crediting of any Entry or a breach by Client of this Section 21.

CLIENT ACKNOWLEDGES THAT IT HAS READ THESE TERMS OF SERVICE, UNDERSTANDS THEM, AND WILL BE BOUND BY THE PROVISIONS CONTAINED HEREIN. CLIENT FURTHER ACKNOWLEDGES THAT THESE TERMS OF SERVICE MAY NOT BE AMENDED BY CLIENT WITHOUT THE EXPRESS WRITTEN CONSENT OF GWORKS.