

Railroad Commission of Texas

CONTRACT BETWEEN RRC AND VENDOR

STATE OF TEXAS

PURCHASE ORDER NO. _____

COUNTY OF TRAVIS

CONTRACT NO. 455-18-10490

THIS CONTRACTUAL AGREEMENT (Contract) is entered into by and between the STATE OF TEXAS, acting through the **RAILROAD COMMISSION OF TEXAS** (RRC), located at 1701 North Congress Avenue, Austin, Texas, 78701, and **KNOMATIC, LLC** (Vendor), located at 1770 St. James Place, Suite 300, Houston, Texas, 77056 (individually, Party; collectively, Parties).

WITNESSETH: That for and in consideration of the payments and agreements hereinafter described, to be made and performed by the RRC, Vendor hereby agrees to deliver goods and/or services described as: Software as a Service - Vendor's Hosting Services and Licensed Applications, including Knomatic Studio™ (the Goods/Services) for the use and benefit of the RRC as fully and specifically described in the Contract Documents. The Contract Documents include this "Contract Between RRC and Vendor," "Exhibit A – Terms and Conditions of the Contract", and "Exhibit B – Knomatic Specifications." The Contract Documents are hereby incorporated by reference into this **Contract Number 455-18-10490** and become part of the Contract as if fully set forth herein.

In the event of conflict between the Parties to this Contract, this Contract and its exhibits, if any, take priority over all other documents. For purposes of interpretation of the Contract and in resolving conflicts within or between the Contract Documents, any inconsistency or conflict shall be resolved applying the following order of precedence: this Contract; then "Exhibit A – Terms and Conditions of the Contract," and then "Exhibit B – Knomatic Specifications."

The consideration to be paid by the RRC to the VENDOR for furnishing the Goods/Services is the not to exceed amount of **One hundred twenty thousand dollars and zero cents (\$120,000.00) which represents Sixty thousand dollars and no cents (\$60,000) per year fee (Annual License Fee) to be paid in accordance with Exhibit A – Terms and Conditions of the Contract.**

Vendor is currently delivering the Goods/Services. Time is of the essence in delivery and performance of this Contract.

Vendor further agrees to comply with all terms and conditions of the Contract and Contract Documents.

Payments by RRC shall be warrants issued by the Comptroller of Public Accounts out of monies appropriated to the Railroad Commission of Texas for such purpose and shall be made in accordance with Article 8 of Exhibit A – Terms and Conditions of the Contract.

The dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used by RRC and Vendor to attempt to resolve any disputes arising under the Contract.

The venue of any suit brought for any breach of this Contract is hereby fixed in a court of competent jurisdiction in Travis County, Texas.

The Vendor hereby assigns to RRC all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. SEC. 1 et. seq. (1973), with all payments (if any) arising therefrom shall be due and payable in Travis County, Texas.

This Agreement is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature or otherwise made available to the RRC for the Goods/Services under the Contract.

The effective date of this Contract is March 1, 2018 (Effective Date), with an initial term of this Contract to be two (2) years from the Effective Date. This Contract is non-renewable and may be extended only by agreement by the Parties set forth in a fully executed amendment to the Contract issued no later than the last day of the initial term of the Contract.

The Parties for themselves, their heirs, successors, executors, administrators, and assigns, do hereby agree to full performance of the covenants herein contained.

IN WITNESS WHEREOF, the Parties to these presents have electronically executed this Contract which shall be deemed an original. By the electronic signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective Parties.

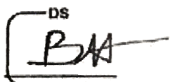
RAILROAD COMMISSION OF TEXAS

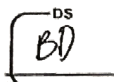
KNOMATIC, LLC

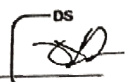
By: 
Wei Wang A320E7878B01444...
Executive Director

By: 
John Mercadante III
CEO

RRC use only.

Div. Director: 

CM Director: 

OGC: 

RAILROAD COMMISSION OF TEXAS

Exhibit A - Terms and Conditions of the Contract For Product and Related Services Contracts

The following terms and conditions shall govern the conduct of Railroad Commission of Texas (RRC) and Knomatic, LLC (Vendor) (individually, Party; collectively, Parties) during the term of the Contract, and are incorporated into the Contract as though fully set forth therein. In the event Vendor subcontracts any or all services or parts of services related to the Contract, Vendor shall require all subcontractors of all tiers to comply with the terms and conditions of the Contract.

1. **Contract Scope:** Vendor shall provide the Hosted Services and Licensed Applications specified in “Exhibit B – Knomatic Specifications” included within the Contract Documents.
2. **No Quantity Guarantees:** RRC makes no express or implied guarantees or warranties that any specific quantity or dollar amount of products and related services will be procured except as agreed to within the fully executed Contract.
3. **Definitions:** As used throughout the Contract, the following terms have the meaning set forth below:
 - A. **Compliance Check** - an audit of Vendor’s compliance with the Contract may be performed by a third-party auditor, RRC’s internal audit department, RRC’s contract management staff, or RRC’s authorized designees.
 - B. **Contract** - the entire agreement between RRC and Vendor, including all the Contract Documents, into which these Terms and Conditions are incorporated as if fully set forth therein.
 - C. **Contract Documents** – includes the fully executed “Contract Between RRC and Vendor” and fully executed amendments thereto (if any), “Exhibit A – Terms and Conditions of the Contract”, “Exhibit B – Knomatic Specifications”, and any exhibits, appendices, and attachments thereto and incorporated therein through written reference.
 - D. **Day** - business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
 - E. **Purchase Order** - RRC’s fiscal form or format used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or another authorized instrument.)
 - F. **RRC** - the Railroad Commission of Texas, an agency of the State of Texas, whose headquarters offices are located at 1701 North Congress Avenue, Austin, TX 78701.
 - G. **State** - the State of Texas.
 - H. **Term** - means the period during which the Contract remains in force and effect. The Term of this Contract shall be a period of two (2) years, commencing on March 1, 2018. Extension of the Term shall occur only through a fully executed Amendment to the Contract.
 - I. **Vendor** – the individual, corporation, Limited Liability Company, partnership, firm, or other entity contracted to provide and deliver the products and/or services to the RRC in accordance with the terms of the Contract; specific to this Contract, Vendor shall mean Knomatic, LLC.
4. **General Provisions:**
 - A. **Entire Agreement:** The Contract Documents constitute the entire agreement between RRC and Vendor. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract Documents shall be binding or valid.
 - B. **Modification of Contract Terms and/or Amendments:** The terms and conditions of the Contract shall govern all transactions between RRC and Vendor under the Contract. The Contract may be amended only upon written agreement between RRC and Vendor; however, the Contract may not be amended in a manner that conflicts with the laws of the United States or of the State of Texas.
 - C. **Invalid Term or Condition:**
 - 1) To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, RRC makes no representations or warranties regarding the enforceability of such term or condition and RRC does

not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.

- 2) If one or more terms or conditions in the Contract, or the application of any term or condition to a Party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to a Party or circumstance shall remain valid and in full force and effect.
- D. Assignment:** RRC or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for RRC, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a Party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning Party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a Party shall require the written consent of the other Party and a mutually agreed written Contract amendment.
- E. Survival:** All applicable guarantees and warranties for products and services delivered under the Contract shall survive the expiration or termination of the Contract. Rights and obligations under this Contract which by their nature should survive, including but not limited to any payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality, and indemnification will remain in effect after termination or expiration hereof.
- F. Choice of Law:** The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in a court of competent jurisdiction, Travis County, Texas. The Parties expressly agree that no provision of the Contract, Exhibits, Appendices, Amendments, or any Purchase Order is in any way intended to constitute a waiver by the State of Texas or by the RRC of any immunities from suit or from liability that the State of Texas or the RRC may have by operation of law. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the State of Texas and the RRC under this Contract or under applicable law does not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
- G. Limitation of Authority:** Vendor shall have no authority to act for or on behalf of the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or RRC.
- H. Proof of Financial Stability:** RRC may require Vendor to provide proof of financial stability prior to or at any time during the Contract term.
- I. Vendor Identification:** Vendor shall provide Vendor's Texas Identification Number (TIN) issued by the Texas Comptroller of Public Accounts prior to Vendor issuing its first invoice to RRC.

5. Intellectual Property Matters:

A. Definitions:

- 1) "Work Product" means any and all deliverables, including the solutions, produced by the RRC utilizing the Hosted Services and Licensed Applications, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived by the RRC at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables produced by the RRC under the Contract, and (viii)

all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived by the RRC for the use or benefit of RRC in connection with this Contract or with funds appropriated by or for RRC or RRC's benefit.

Work Product does not include Vendor's Hosted Services, Licensed Applications, software, or technology, including any improvements by Vendor to the Hosted Services and Licensed Applications, software, or technology after the execution of this Contract, as more fully and specifically described in Exhibit B-Knomatic Specifications.

- 2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide legal rights or interests that the Party may have acquired by assignment or license with the right to grant sublicenses, but does not include any rights of the RRC to Vendor's Hosted Services and Licensed Applications.
- 3) "Deliverables" under this Contract are Vendor's Hosted Services and Licensed Applications which are "Software as a Service" (SaaS) in nature. The Parties agree a statement of work shall not be required for Vendor's delivery of the Hosted Services and Licensed Applications defined in Exhibit B-Knomatic Specifications. The Parties agree Vendor has delivered, and RRC has begun use of, Vendor's Hosted Services and Licensed Applications as of March 1, 2018.
- 4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to RRC under this Contract.
- 5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to licensing Vendor's Hosted Services and Licensed Applications to RRC and prior to receiving any documents, materials, information or funding from or on behalf of RRC relating to Vendor's Hosted Services and Licensed Applications, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Vendor's Hosted Services and Licensed Applications for RRC hereunder.

- B. **Ownership:** As between Vendor and RRC, the Work Product and Intellectual Property Rights in the Work Product are and shall be owned exclusively by RRC and not Vendor. RRC understands that Vendor shall have no obligation to license Vendor's Hosted Licensed Applications beyond the initial Term of the Contract. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by RRC. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to RRC all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and RRC shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and RRC do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Vendor and RRC, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.
- C. **Further Actions:** Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by RRC to evidence more fully RRC's ownership and/or registration of all Intellectual Property Rights in all Work Product to RRC to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by RRC. In the event RRC shall be unable to obtain Vendor's

signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to RRC's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints RRC and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to RRC is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. RRC shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at RRC's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- D. Waiver of Moral Rights:** Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- E. Confidentiality:** All documents, information and materials used by RRC for RRC's use in and preparation of the Work Product shall be deemed the confidential information of RRC, and subject to the license granted by RRC to Vendor under sub-paragraph H., hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of RRC.
- F. Injunctive Relief:** The Contract is intended to protect RRC's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights in the Work Product, and any misuse of such rights would cause substantial and irreparable harm to RRC's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction in Travis County, Texas may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by RRC, without requiring proof of irreparable injury as same should be presumed.
- G. Return of Materials Pertaining to Work Product:** Within 30 days of Vendor's receipt of written request of RRC, but in any event within fifteen (15) calendar days of termination or expiration of this Contract, Vendor shall surrender to RRC all documents, and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed and furnished by RRC to Vendor, including all materials embodying any Work Product, any RRC confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents, information, and things furnished through physical or electronic means from RRC to Vendor by RRC's use of Vendor's Hosted Services and Licensed Applications.
- H. Vendor License to Use:** RRC hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely and only as necessary for RRC to access Vendor's Hosted Services and Licensed Applications. Except as provided in this Section, neither Vendor nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of RRC, which consent may be withheld in RRC's sole discretion.
- I. Third-Party Underlying and Derivative Works:** During the Term of the Contract and extensions thereto (if any), to the extent that any Vendor IP or Third Party IP are embodied or reflected in Vendor's Hosted Services and Licensed Applications and are necessary for RRC to utilize Vendor's Hosted Services and Licensed Applications, Vendor hereby grants to RRC, or shall obtain from the applicable third party for RRC's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for RRC's internal business purposes only, to (i) use, execute,

reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to RRC in conjunction with Vendor's Hosted Services and Licensed Applications, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify RRC on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide RRC with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in Vendor's Hosted Services and Licensed Applications.

J. Agreement with Subcontractors:

- 1) Vendor shall neither assign, transfer, nor delegate any rights, obligations, or duties under the Contract without the prior written consent of RRC. Notwithstanding this provision, it is mutually understood and agreed that Vendor may subcontract with others for some or all the Hosted Services and Licensed Applications.
- 2) Vendor shall identify any proposed subcontractor to RRC prior to subcontractor commencing work related to the Contract. RRC retains the right to check any subcontractor's background and approve or reject use of a subcontractor. RRC shall approve or reject in writing all subcontractors.
- 3) Subcontractors providing service under the Contract shall meet the same requirements and level of experience as required of the Vendor.
- 4) No subcontractor, whether approved or not approved by RRC, shall relieve Vendor of responsibility for work, goods, or services to be delivered under the Contract.

K. License to RRC: During the Contract Term, Vendor grants to RRC, a perpetual, irrevocable, royalty free license, solely for the RRC's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to RRC in conjunction with the Vendor's Hosted Services and Licensed Applications. The foregoing license includes the right to sublicense to third parties, solely for engaging such third parties to assist or carryout RRC's internal business use of the Vendor's Hosted Services and Licensed Applications. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights: To the extent not inconsistent with RRC's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with the Work Product that RRC produces as a result of use of Vendor's Hosted Services and Licensed Applications hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of RRC therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of RRC therein to offer competitive goods or services to third parties, Vendor and RRC agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

6. Product Terms and Conditions:

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only):

- 1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide RRC with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Warranties: Notwithstanding any disclaimers in Vendor's terms and conditions and notwithstanding any other provision of the Contract to the contrary, Vendor warrants and guarantees that all services will meet all specifications of the Contract.

7. **Contract Fulfillment:**

- A. **Use of Access Data Prohibited:** If Vendor stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor to implement the Contract and shall not be disseminated to third parties or used for marketing or other purposes unauthorized by RRC.
- B. **Orientation Meeting: The Parties agree performance and delivery of Hosted Services and Licensed Applications began March 1, 2018 and** an orientation meeting to discuss the content and procedures of the Contract shall not be required.
- C. **Performance Review Meetings:** In the event of decrease in Service Standard RRC may require Vendor to attend periodic meetings to review the Vendor's performance under the Contract. Such meetings will be held at RRC headquarters in Austin, Texas at a date and time mutually acceptable to RRC and the Vendor or by teleconference, at RRC's discretion. RRC shall bear no cost for the time and travel of the Vendor for attendance at the meeting

8. **Pricing, Purchase Orders, Invoices, and Payments:**

- A. **All-inclusive Price:**
 - 1) Vendor's Annual License Fee to be paid by RRC under this Contract shall include all expenses related to RRC's use of Vendor's Hosted Services and Licensed Applications under the Contract
 - 2) Unless preapproved in writing, RRC will not reimburse Vendor for any costs to Vendor related to RRC's use of Vendor's Hosted Services and Licensed Applications.
- B. **Tax-Exempt:** As per Section 151.309, Texas Tax Code, purchased by RRC under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, purchases by RRC under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).
- C. **Purchase Orders:** As applicable, all RRC Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders not conflicting with the Contract Documents shall be effective and binding upon Vendor when accepted by Vendor.
- D. **Invoices:**
 - 1) Invoices shall be submitted by the Vendor directly to RRC and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the RRC to Vendor.
 - 2) Invoices must be timely and accurate. Each invoice must match RRC's Purchase Order and include any written changes that may apply, as it relates to products, prices, and quantities, as applicable. Invoices must include the RRC's Purchase Order number or other pertinent information for verification of receipt of the product or services by the RRC.
- E. **Payments:** RRC shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

9. **Contract Administration:**

- A. **Contract Managers:** RRC and Vendor will each provide a dedicated staff member to support the Contract.
 - 1) **State Contract Specialist:** RRC shall provide a Contract Specialist whose duties shall include, but not be limited to, i) advising RRC and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor, if required.

Upon execution of the Contract, RRC shall provide Vendor with written notification of the RRC Contract Specialist's name and contact information.

- 2) **Vendor Contract Manager:** Vendor shall provide a dedicated Contract Manager whose duties shall include but not be limited to: i) supporting the management of the Contract, ii) facilitating dispute resolution between Vendor and RRC, and iii) advising RRC of Vendor's performance under the terms and conditions of the Contract. RRC reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of RRC, adequately serving the needs of the State.

Upon execution of the Contract, Vendor shall provide RRC with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports (if required under the Contract) and receiving RRC's payment of Annual License Fee specified herein.

B. Reserved.

C. Records and Audit:

- 1) Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.
- 2) Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Vendor's name, RRC name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, RRC Purchase Order number, contact name, RRC's complete billing address, HSP reports, and such other documentation as RRC may request.
- 3) Upon reasonable request of RRC, Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the RRC Internal Audit department or RRC Contract Management staff, including the compliance checks designated by the RRC Internal Audit department, RRC Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by RRC for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor shall provide copies and printouts requested by RRC without charge. RRC shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to the RRC Internal Audit department, RRC Contract Management staff, and/or designees as needed. Vendor shall provide adequate office space to RRC staff during the performance of Compliance Checks. If Vendor is found to be responsible for inaccurate reports, RRC may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

10. Vendor Responsibilities:**A. Indemnification:**

- 1) **General:** VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND THE RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

GENERAL INDEMNIFICATION SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR RRC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE RRC OR ITS EMPLOYEES.

For avoidance of doubt, RRC shall not indemnify Vendor or any other entity under this Contract.

2) Infringement: Patent, Trademark, Copyright, and Other Intellectual Property:

- A) **Claims.** VENDOR SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER BY VENDOR; AND/OR (3) THE STATE'S OR RRC'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE RRC BY VENDOR OR OTHERWISE TO WHICH THE STATE OF TEXAS AND/OR RRC HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THIS CONTRACT. VENDOR AND THE STATE OF TEXAS AND/OR RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN THE STATE OF TEXAS AND/OR THE RRC ARE/IS NAMED AS A DEFENDANT IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE WRITTEN CONCURRENCE FROM THE OAG. IN ADDITION, VENDOR SHALL REIMBURSE THE STATE OF TEXAS AND THE RRC FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS, OR ANY OTHER AMOUNTS INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF RRC DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS

INTERESTS AND THOSE OF VENDOR OR IF RRC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, RRC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF RRC'S COUNSEL. VENDOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS, AND PERMITS, IF ANY, ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS, AND PERMITS.

- B) Notice.** If Vendor becomes aware of an actual or potential claim, or RRC provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against RRC, shall), at Vendor's sole option and expense; (i) procure for RRC the right to continue to use the affected portion of Vendor's Hosted Services and Licensed Applications, or (ii) modify or replace the affected portion of Vendor's Hosted Services and Licensed Applications with functionally equivalent or superior product or service so that RRC's use is non-infringing.
 - C) Limitations.** Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of Vendor's Hosted Services and Licensed Applications for a purpose or in a manner for which Vendor's Hosted Services and Licensed Applications were not designed, (ii) any modification made to Vendor's Hosted Services and Licensed Applications without Vendor's written approval, (iii) any modifications made to Vendor's Hosted Services and Licensed Applications by Vendor pursuant to RRC's specific instructions, (iv) any intellectual property right owned by or licensed to RRC, or (v) any use of Vendor's Hosted Services and Licensed Applications by RRC that is not in conformity with the terms of any applicable license agreement.
- B. Independent Contractor:** VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE STATE OF TEXAS OR THE RRC. Vendor's employees are not and shall not be construed as employees or agents of the State of Texas or RRC. Subject only to the terms of this Contract, Vendor shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for RRC whatsoever with respect to the indebtedness, liabilities, and obligations of Vendor or any other party.
- C. Taxes/Worker's Compensation/Unemployment Insurance:**
- 1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE RRC AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY RRC.
 - 2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS RRC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE

OF THE ATTORNEY GENERAL. VENDOR AND THE RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- D. Legal Obligations:** Vendor shall procure and maintain for the duration of the Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Vendor to provide the goods or services required by the Contract. Vendor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Vendor shall be responsible for payment of any such government obligations not paid by its subcontractors during performance of Contract.
- E. Federal, State, and Local Requirements:** Vendor shall demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees. Vendor is solely responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Vendor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Vendor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Vendor shall indemnify the State of Texas and RRC and shall pay all costs, penalties, or losses resulting from Vendor's omission or breach of this section.
- F. Ability to Conduct Business in Texas:** Vendor shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas.
- G. Equal Opportunity Compliance:** Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.
- H. Use of Subcontractors:** If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.
- I. Responsibility for Actions:**
 - 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of RRC or the State.
 - 2) Vendor, for itself and on behalf of its subcontractors, shall report to RRC promptly any changes to the disclosures, certifications, representations, and warranties within the Contract Documents, including but not limited to those within section 10 of this Exhibit A-Terms and Conditions of the Contract. Vendor covenants to fully cooperate with RRC to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.
 - 3) Vendor agrees to fully cooperate with RRC in the execution of any Contract amendments necessary to effectuate compliance with laws of the State of Texas when such laws require RRC to include additional language in the Contract. During the term of the Contract and any extensions thereof, RRC reserves the right to request amendments or modifications to the Contract when RRC determines such action to be in the best interests of the State of Texas and/or RRC and for compliance with all applicable state and federal laws, regulations, requirements, and guidelines.

J. Confidentiality:

- 1) Vendor acknowledges that RRC is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that RRC is a government agency that will comply with the Public Information Act and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Pursuant to Texas Government Code Section 2252.907, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Specific formats acceptable to RRC include MS Word®, MS Excel®, and *.pdf.
- 3) Under the terms of the Contract, RRC may provide Vendor with information related to RRC. Vendor shall not re-sell or otherwise distribute or release RRC information to any party in any manner.

K. Security of Premises, Equipment, Data and Personnel: Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the RRC. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the RRC, in accordance with the instruction of the RRC. Vendor shall be responsible for damage to RRC's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor fails to comply with RRC's security requirements, then RRC may immediately terminate its Purchase Order and related Service Agreement.**L. Background and/or Criminal History Investigation:** Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the RRC under the Contract may be performed by RRC. Should any employee or subcontractor of the Vendor who will be providing services to the RRC under the Contract not be acceptable to the RRC because of results from the background and/or criminal history check, then RRC may immediately terminate the Contract or request replacement of the employee or subcontractor in question.**M. Limitation of Liability:** For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the RRC shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.**N. Overcharges:** Vendor hereby assigns to RRC all its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.**O. Antitrust Affirmation:** Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.**P. Required Insurance Coverage:** As a condition of this Contract with RRC, Vendor shall provide the listed insurance coverage within five (5) business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any RRC premises and/or

use employer vehicles to conduct work on behalf of RRC. Vendor may not begin performance under the Contract until such proof of insurance coverage is provided to, and approved by, RRC.

- 1) All required insurance must be issued by companies that have both a financial strength rating of A or better and a financial size category class of VII or better by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage.
- 2) Policies shall be provided on a form approved by the Texas Department of Insurance and be satisfactory to the RRC.
- 3) Required policies and coverages must be written on a primary and non-contributory basis with any other insurance coverage Vendor currently has in place, include a Waiver of Subrogation endorsement, and provide 30-day Notice of Cancellation, non-renewal, or reduction in coverage.
- 4) All certificates of insurance except Worker's Compensation shall name the State of Texas and the Railroad Commission of Texas as Additional Insureds.
- 5) Failure to obtain, maintain, and/or renew the required insurance shall constitute a material breach of and default under this Contract. If Vendor fails to remedy such breach within five (5) business days after notice by the RRC, Vendor will be liable for all costs, liabilities, damages and penalties resulting to the State of Texas and the RRC from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Vendor by the RRC. In the event of any failure by Vendor to comply with the provisions of this Contract, the RRC may, without compromising or waiving any right or remedy at law or in equity, on notice to the Vendor, purchase such insurance, at the Vendor's expense, provided that the RRC shall have no obligation to do so and if the RRC shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- 6) Required coverage must remain in effect through the full term of the Contract. The minimum acceptable insurance provisions are as follows:

Type of Insurance	Each Occurrence/Aggregate
Workers' Compensation	Statutory limits Pursuant to Texas Labor Code §§406.096(a) and 406.096(b)
Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
Commercial General Liability (occurrence based) Includes liability arising out of all locations and operations of Vendor, including but not limited to liability assumed under this Contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limits of liability.	Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expense each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability
Automobile Liability; any auto coverage required	\$1,000,000 Combined Single Limit (for each accident)

- Q. Use of State Property:** Vendor is prohibited from using the RRC's equipment, the RRC's location, or any other resources of the RRC or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the RRC's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the RRC immediately upon demand by the RRC. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to RRC and RRC under the contract and applicable law.

- R. Immigration:** The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Vendor shall require its subcontractors to comply with the requirements of this section, and Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

- S. U.S. Department of Homeland Security's E-Verify System:** By entering into this Contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system (<https://www.uscis.gov/e-verify>) to determine the eligibility of:

- 1) All persons employed to perform duties within Texas, during the term of the Contract; and
- 2) All persons (including subcontractors) assigned by Vendor to perform work pursuant to the Contract, within the United States of America.

Vendor shall provide, upon request of RRC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed.

IF THIS CERTIFICATION IS FALSELY MADE, THE CONTRACT MAY BE IMMEDIATELY TERMINATED, AT THE DISCRETION OF RRC AND AT NO FAULT TO RRC, WITH NO PRIOR NOTIFICATION. IN THE EVENT OF SUCH TERMINATION, VENDOR SHALL BE RESPONSIBLE FOR DIRECT, CONSEQUENTIAL, AND INDIRECT COSTS OF ANY SOLICITATION RRC MUST UNDERTAKE TO REPLACE THE TERMINATED CONTRACT.

- T. Public Disclosure:** No public disclosures or news releases pertaining to this contract shall be made without prior written approval of RRC.
- U. Product and/or Services Substitutions:** Substitutions are not permitted without the written permission of RRC.
- V. Warranties:** Notwithstanding any disclaimers in Vendor's Proposal and notwithstanding any other provision of the Contract to the contrary, Vendor warrants and guarantees that all services will meet all specifications of the Contract.
- W. Secure Erasure of Hard Disk Products and/or Services:** Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services in accordance with 1 TAC 202.
- X. Deceptive Trade Practices; Unfair Business Practices:** Vendor represents and warrants that neither Vendor nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

- Y. Drug Free Workplace Policy:** Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain

a drug- free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

Z. Vendor Reporting Requirements: Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

AA. Vendor Certifications: Vendor certifies that the information contained in this Contract is accurate and complete. By Vendor's signature affixed to the Contract, Vendor certifies on behalf of Vendor and Vendor's subcontractors, if any, that they:

- 1) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- 2) are not currently delinquent in the payment of any franchise tax owed the State and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- 3) under Section 231.006 of the Family Code, Vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate;
- 4) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for obtaining an unfair price advantage;
- 5) have not received payment from RRC or any of its employees for participating in the preparation of the Contract;
- 6) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld, if this certification is inaccurate;
- 7) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- 8) Vendor and its principals are not suspended, debarred, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency;
- 9) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- 10) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- 11) agree that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support; ;
- 12) are in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency, and Vendor certifies that it is not (1) the executive head of the agency, (2) a person who at any time during the four years before the date of the Contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency;
- 13) have identified all current or former, within the last five years, employees of the State assigned to work on the RRC Contract 20% or more of their time and have disclosed them to RRC and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall

disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;

- 14) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- 15) under Sections 2155.006 and 2261.053, Texas Government Code, Vendor and Vendor's subcontractors, if any, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated, and payment withheld, if this certification is inaccurate;
- 16) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.
- 17) in accordance with §2155.4441, Texas Government Code, Vendor agrees that during the performance of this Contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.;
- 18) represent and warrant that the RRC's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- 19) represent and warrant that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code; and
- 20) represent and warrant that Pursuant to Texas Government Code Sections 2270.001-2270.002, relating to prohibition on contracts with companies boycotting Israel, Vendor certifies that Vendor: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Contract.

11. **Contract Enforcement:**

A. **Enforcement of Contract and Dispute Resolution:**

- 1) Vendor and RRC agree to the following: (i) a Party's failure to require strict performance of any provision of the Contract shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision; (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; and (iii) actions or proceedings arising from the Contract shall be heard in any court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a RRC and Vendor shall be resolved in accordance with the dispute resolution process in subparagraph A.1), above. RRC shall not be a Party to any dispute resolution process inconsistent with that listed in subparagraph A.1), above, unless RRC and Vendor otherwise agree in writing.
- 3) State agencies are required by 34 TAC §20.115 to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. **Termination:** The Contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one of the following circumstances

1) **Termination or Cancellation for Convenience:**

- a) **Bi-lateral Agreement:** Upon a written agreement between RRC and Vendor the Contract may be terminated or canceled.
- b) **RRC Cancel Upon Thirty (30) Days' Notice:** RRC may in its sole discretion terminate, cancel the Contract, or cancel specific services of the Contract with thirty (30) calendar days' written notice to Vendor.

- 2) **Termination for Lack of Appropriated Funds, Legislative Action, or Necessity of Performance:** The Contract is subject to termination or cancellation, without penalty to RRC, in either whole or in part, subject to the availability of state funds. RRC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If RRC becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds

which would render either RRC's or Vendor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Part, RRC will not be liable to Vendor for any damages which are caused or associated with such termination or cancellation, and RRC will not be required to give prior notice.

3) Termination or Cancellation for Cause:

- a) **Absolute Right:** RRC shall have the absolute right to terminate the Contract without recourse in the event: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by RRC to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.
- b) **Breach of Material Term:** Either party may, upon giving thirty (30) calendar day's written notice identifying specifically the basis of such notice, terminate the Contract for breach of a material term or condition of the Contract, provided the breaching party must not have cured such breach within the thirty (30) calendar day period. In the event of such termination, Vendor will be paid for all services accepted prior to the date of the termination.

No additional charges or fees will be assessed to RRC for the termination or cancellation.

Upon termination or cancellation under this provision, Vendor shall refund to RRC any amounts attributable to the terminated or canceled months within thirty (30) days of the termination or cancellation.

- c) **Vendor Nonperformance:** If Vendor defaults on the Contract after execution of the Contract, RRC reserves the right to cancel the Contract without notice. In such instance Vendor will not be considered for award of a Contract, and may not be considered in future solicitations, for the same type of work unless the specification or scope of work significantly changed. Vendor's period of suspension from being considered will be determined by the agency based on the seriousness of the default. The Vendor remains liable for all covenants and indemnities under the Contract. The Vendor is liable for all costs and expenses, including court costs, incurred by RRC with respect to the enforcement of any remedies listed herein.
- d) **Bankruptcy:** Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against the Vendor, RRC may terminate the Contract for cause without notice. Such termination shall be effective upon the date of such filing or upon the date of judgment.
- e) **Legal Remedies and Damages from Breach of Contract:** RRC expressly reserves all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of contract by Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of Vendor. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason and RRC expressly waives no such rights or remedies.
- f) **Substitution of Services:** In the event of RRC's termination or cancellation of the Contract for cause, RRC may procure, upon such reasonable terms and in such manner as RRC deems appropriate, substitute services similar to any services terminated or canceled. Vendor shall be liable to RRC for any excess or additional costs incurred by RRC in acquiring such services plus court costs and attorneys' fees. RRC's recovery of costs under this section is in addition to any other remedies available to RRC under the Contract and/or under applicable law.

4) Miscellaneous Termination Provisions:

- a) **RRC Rights Under Termination:** In the event the Contract expires or is terminated for any reason RRC shall retain its rights under the Contract.
- b) **Vendor Rights Under Termination:** In the event a Purchase Order expires or is terminated RRC shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.
- c) **Recovery of Funds:** RRC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to RRC under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Vendor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to RRC under the Contract or under applicable law. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason, and RRC expressly waives no such rights or remedies.

- 5) Force Majeure:** RRC or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the Party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the Party's control to ensure performance and to shorten the duration of the event of Force Majeure. The Party suffering an event of Force Majeure shall provide notice of the event to the other Party when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, RRC may terminate a Purchase Order if it is determined by RRC that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of RRC.

Notwithstanding the foregoing paragraph, in the event any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against Vendor at RRC's facility and such labor activity results in the curtailment or discontinuation of services performed under the Contract, RRC shall have the right during said period to employ any means legally permissible to have the work performed.

- C. Severability.** If any provision contained in the Contract is held to be unenforceable by a court of law or equity, the Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

- 12. Notification:** All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a Party at the respective address indicated below or to such other address as such Party shall have notified the other Party in writing.

A. Vendor Contact and Notice Information:

Knomatic, LLC

Point of Contact: John Mercadante
Physical Address: 1770 St. James Place, Suite 300
City, State, Zip: Houston, Texas, 77056

Mailing Address: **Knomatic, LLC**
1770 St. James Place, Suite 300
Phone: 713-417-4240
Email: [REDACTED]

B. RRC Contact and Notice Information:

Railroad Commission of Texas

Point of Contact: Bill Dodson, Director of Administration Division
Physical Address: 1701 N. Congress Avenue
10th Floor
Austin, TX 78701

Mailing Address: **Railroad Commission of Texas**
PO Box 12967
Austin, TX 78711-2967
Phone: 512-463-5881
Email: Bill.Dodson@rrc.texas.gov

- 13. Captions:** Captions, titles, headers, and labels contained in the Contract, Exhibits, Appendices, and Attachments, if any, are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.
- 14. Counterparts:** The Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

EXHIBIT B-KNOMATIC SPECIFICATIONS

John Mercadante III

CEO

1770 St James Place, Suite 300, Houston, TX 77056

713-417-4240 [REDACTED]



3/16/2018

Sandra Maldonado

Railroad Commission of Texas

(512) 463-3949

Sandra.Maldonado@rrc.texas.gov

Dear Sandra Maldonado,

I understand that for the Railroad Commission of Texas to procure a subscription for the Knomatic Studio software an exemption from the DIR will be required. The Knomatic Studio is a software product that provides business process automation leveraging existing legacy systems. This letter provides you with the information necessary to apply for and receive approval for this exemption.

The Railroad Commission of Texas is purchasing a license (through an annual subscription) to the Knomatic Studio software to be used to configure and automate up to 10 forms/processes. The first processes are the W3A and W3 which address well plugging activities. The license can be expanded to include additional forms/processes for additional annual cost. The Knomatic Studio software is a proprietary offering developed and marketed by Knomatic. The offering is not a Common off the Shelf software product like Oracle database or an ERP, and provides unique capabilities that are not available from industry.

The Knomatic Studio software is only available for licensing directly from Knomatic.

Sincerely,

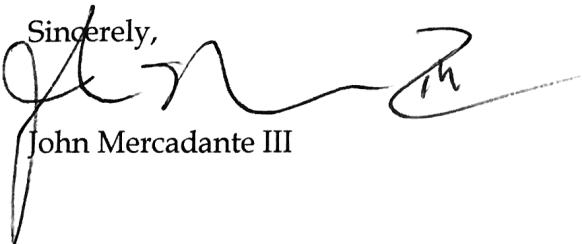

John Mercadante III

EXHIBIT B-KNOMATIC SPECIFICATIONS

Knomatic Subscription Order Form

Customer: Texas Railroad Commission

Name: John Mercadante III

Agency Name: Texas Railroad Commission

Address: 1701 N. Congress Ave. Austin, TX 78701

The license subscription price for the Knomatic Studio™ as proposed and agreed (at a discounted rate) for the project is **\$60,000** per year (which equates to \$5,000 per month). This subscription level covers the use of the Knomatic Studio™ to deploy ten (10) business Forms/processes of the Railroad Commission's choosing. The Well Plugging and Well plugging completion Online Filing Project counts as two (2) of the ten (10) Forms/processes.

Future product release upgrades, which include maintenance items, feature enhancements, and technology advancements are included in the subscription during the additional 24 month term.

**The Knomatic subscription includes use of the Solution for enabling business Forms/processes, periodic upgrades and hosting (at Microsoft Azure).*

Expansion Subscription Pricing

As RRC leverages the Knomatic Studio for additional Forms/Processes the annual subscription will be adjusted. Based on the year in which the RRC elects to increase the number of Forms/Processes included in the subscription has an impact on the discount provided with this initial agreement.

Annual Pricing for Knomatic				
Forms/Processes	List Pricing 2020+	RRC 2017 Discount (50%)	RRC 2018 Discount (25%)	RRC 2019 Discount (10%)
Up to 10		\$60,000		
Up to 35	\$240,000	N/ A	\$180,000	\$216,000
Up to 85	\$420,000	N/ A	\$315,000	\$378,000
Unlimited Processes	\$720,000	N/ A	\$540,000	\$648,000

EXHIBIT B-KNOMATIC SPECIFICATIONS**TERMS AND CONDITIONS****1. DEFINITIONS.**

- 1.1 “Annual License Fee” means the total consideration the RRC and Knomatic agree shall be paid each year by RRC to Knomatic for Knomatic providing the Hosted Services and Licensed Applications to RRC for a period of one year. The Annual License Fee to be paid per year for the Term of the Contract is Sixty thousand dollars and no cents (\$60,000.00) (which equates to \$5,000.00 per month). The Annual License Fee may not be changed unless the Parties agree to a change through a fully executed Amendment to the Contract.
- 1.2 “Authorized Users” means (i) any employee of RRC, and (ii) any agent or contractor of RRC accessing or using the Licensed Applications or Hosted Services on behalf of RRC, provided such agent or contractor has entered into a binding contract with RRC that is no less protective of Knomatic and its proprietary rights than the terms of the Contract.
- 1.3 “Documentation” shall mean any online or printed user manuals or functional specifications that are provided to RRC by Knomatic and any updates or derivative works of the foregoing.
- 1.4 “Hosted Services” means any web-based or network-based software service accessible by RRC, as identified within this Exhibit B-Knomatic Specifications.
- 1.5 “Licensed Applications” means Knomatic’s proprietary software application Knomatic Studio™ as identified, and any other applications identified, in this Exhibit B-Knomatic Specifications, with such applications being licensed to RRC pursuant to the Contract for use on RRC’s computer systems. Licensed Applications include mobile applications developed using Hosted Services. RRC’s access to Licensed Applications shall be limited to the Term of the Contract unless extended through fully executed Amendment to the Contract.
- 1.6 “Professional Services” means consulting and other professional services ordered by RRC from Knomatic pursuant to a separately executed Contract. The term “Professional Services” does not include Hosted Services.
- 1.7 “Scheduled Downtime” means the total amount of time during any calendar month, measured in minutes, during which RRC is not able to access the Hosted Services, due to planned system maintenance performed by Knomatic. Scheduled Downtime shall include the hours 12:00 AM and 3:00 AM CST on Saturday and Sunday. Knomatic reserves the right to change the times at which it conducts such maintenance, subject to written agreement of both Parties.
- 1.8 “Services” means, collectively, both the Hosted Services and Professional Services.
- 1.9 “RRC” means the Party entering into the Contract to obtain products and Services from Knomatic as identified in the Contract and includes the subsidiaries and affiliates of RRC.
- 1.10 “RRC’s Data” means all data or information submitted or posted by RRC to the Hosted Services.
- 1.11 “System Availability” means, with respect to any calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the total time during such month, and thereafter dividing the difference so obtained by the total time during such month. Represented algebraically, System Availability for any calendar month is determined as follows:

$$\frac{\text{Total Monthly Time} - \text{Unscheduled Downtime}}{\text{Total Monthly Time}}$$

- 1.12 “Term” means the period during which the Contract remains in force and effect in accordance with “Knomatic Specifications” Section 10.
- 1.13 “Third-Party Content” means any information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) provided by a third party which RRC may have access to as part of, or through use of, the Hosted Services.
- 1.14 “Total Monthly Time” is deemed to include all minutes in the relevant calendar month to the extent such minutes are included within the Term of the Contract.
- 1.15 “Unscheduled Downtime” means the total amount of time during any calendar month, measured in minutes, during which RRC is not able to access the features and functions of the Hosted Services or there is a degradation in performance of the Hosted Services such that RRC cannot reasonably use the Hosted Services to conduct business. “Unscheduled Downtime” excludes the following: (i) Scheduled

Downtime, (ii) failures in external Internet or VPN configurations not managed by Knomatic; (iii) Force Majeure events; (iv) failures caused by an act or omission of RRC or third parties (other than Knomatic's contractors, subcontractors, or suppliers), including security incidents caused by such act or omission; and (v) failures of third-party equipment, hardware, software, or services not provided as part of the Hosted Services.

2. RRC'S RIGHT TO ACCESS AND USE HOSTED SERVICES.

- 2.1 Rights to Access and Use. For the duration of the Term and subject to the terms and conditions of the Contract, Knomatic grants RRC a non-exclusive, non-transferable, and non-sublicensable right to access and use the Hosted Services for RRC's internal business operations. RRC may allow Authorized Users to use the Hosted Services, and RRC is responsible for such Authorized User's compliance with the Contract.
- 2.2 Delivery of Software. Nothing in the Contract obligates Knomatic to deliver or make available any physical copies of the software or other technology utilized to provide the Hosted Services to RRC.
- 2.3 Service Level Agreement.
 - (a) "Service Standard." Unless otherwise provided for in in this Exhibit B-Knomatic Specifications, the Hosted Services will be available to RRC 99.9% of the time during each calendar month.

Knomatic shall perform and ensure completion of a successful daily backup of the application, database, and associated code to be used to restore services in the event of an incident, compromise, or system failure. Knomatic is solely responsible to RRC for operations of any center providing Hosted Services under the Contract and for ensuring security, backup, and disaster recovery processes and procedures are in place for all Hosted Services, Licensed Applications, and services delivered under the Contract.

Knomatic shall ensure security patches and revisions of Knomatic's Hosted Services and Licensed Applications, including software, are evaluated and applied in a prompt and timely manner. Knomatic's evaluation and application of patches, revisions, and/or modifications shall include Knomatic's performance and coordination of regression testing and user acceptance testing by RRC. Delivery and performance of remediation of any security vulnerability within Knomatic's Hosted Services and Licensed Applications, including software, is the sole responsibility of Knomatic and shall be provided at no additional charge to RRC.

Knomatic shall ensure all interfaces and interactions between Knomatic's Hosted Services and RRC's applications, systems, and users are delivered in a continuous, uninterrupted manner to ensure highest level of data integrity.

- (b) System Monitoring and Measurement. Knomatic will provide for monitoring of System Availability on an ongoing basis. All measurements of System Availability will be calculated monthly for each calendar month during the Term.

Knomatic shall permit RRC to perform an audit for data leakage or loss, and Knomatic shall fully cooperate with RRC in any such audit.

- (c) Service Level Credits Against Fees. In the event Unscheduled Downtime occurs, RRC will be entitled to credits against its subsequent payment of Annual License Fee for Hosted Services according to the following formula: If system availability is below 99.9%, but above 97.9%, in any calendar month, RRC's next due Annual License Fee will be reduced by 5% of the prorated, Monthly Subscription Fee (Annual License Fee amount divided by 12) accrued for the total duration of unscheduled downtime in excess of the Service Standard. If system availability is below 97.9% or below, RRC's Annual License Fee obligation will be reduced by 50% of the prorated Monthly Subscription Fee accrued for the total duration of the unscheduled downtime

in excess of the Service Standard. In the event RRC has no subsequent payment obligations owing to Knomatic, Knomatic shall issue a refund of credits owed to RRC within 30 days of Knomatic receiving written notice of RRC's request for credit refund.

- (d) Termination for Performance Deficiencies. Knomatic acknowledges that System Availability is important to RRC's business processes. Accordingly, RRC may terminate the Contract if (i) Knomatic fails to meet the Service Standard three (3) or more times during any twelve (12)-month period; or (ii) System Availability for any single calendar month falls below 90% or is unavailable for any consecutive 48-hour period within the month.

3. LICENSED APPLICATIONS GRANTED.

- 3.1 From Knomatic to RRC. For the duration of the Term and subject to the terms and conditions of the Contract, Knomatic hereby grants to RRC a limited, non-exclusive, non-transferable license, without the right to sublicense, to install the object code version of Licensed Applications on computer system(s) used by, owned, or controlled by RRC's Authorized Users and to run such software solely for RRC's internal business operations.
- 3.2 From RRC to Knomatic. To enable Knomatic to provide RRC with the Services, RRC grants Knomatic the right to use, process, and transmit in accordance with the Contract RRC's Data for the duration of the Term. For the avoidance of doubt, all right, title and interest in and to RRC's Data and all related intellectual property rights in RRC's Data, modifications and additions thereto shall at all times remain with RRC.

4. THIRD PARTY CONTENT. As part of the Hosted Services, Knomatic may provide RRC with access to Third Party Content. The type and scope of any Third-Party Content shall be defined in Exhibit B-Knomatic Specifications. The third-party owner, author, or provider of such Third-Party Content retains all ownership and intellectual property rights in and to that content, and RRC's rights to use such Third-Party Content are subject to, and governed by, the terms applicable to such content as specified by such third-party owner, author, or provider. Any Third-Party Content made accessible by Knomatic through the Hosted Services is provided on an "as-is" and "as available" basis without any warranty of any kind.

5. RESTRICTIONS AND UNAUTHORIZED USE.

- 5.1 RRC will use reasonable efforts to prevent unauthorized use of the Licensed Applications and Hosted Services and immediately notify Knomatic of any actual or reasonably suspected unauthorized use that comes to its attention. If RRC learns or reasonably suspects that any of its passwords has been compromised or if any previously Authorized User ceases to be an employee or contractor of RRC, RRC will immediately notify Knomatic.
- 5.2 RRC shall not conduct or permit the: (a) use, copying, modification, rental, lease, sublease, sublicense, distribution or transfer of the Licensed Applications, Documentation or Hosted Services, except as expressly provided in the Contract; (b) creation of any derivative works based on the Licensed Applications, Documentation or Hosted Services; (c) reverse engineering, disassembly, translation, adaptation, or decompiling of the Licensed Applications or Hosted Services (except that RRC may decompile the Licensed Applications or Hosted Services for the purposes of interoperability only to the extent permitted by and subject to strict compliance under applicable law); (d) use of the Licensed Applications, Documentation or Hosted Services in connection with a service bureau or similar activity for the benefit of a third party; or (e) use of the Licensed Applications, Documentation or Hosted Services by any party other than Authorized Users.

6. TECHNICAL SUPPORT. Unless otherwise stipulated in the Contract or by fully executed amendment thereto, Knomatic shall provide technical support via an online portal and via telephone. RRC will be permitted to designate in writing to Knomatic up to two (2) RRC personnel for purposes of obtaining Technical Support from Knomatic ("Eligible RRC Personnel"). Knomatic will provide Technical Support to Eligible RRC Personnel Monday through Friday, excluding Knomatic corporate holidays, from 8:00 a.m. to

7:00 p.m., Central time. Knomatic shall have no obligation to provide Technical Support, by any means, to any entity or individual other than Eligible RRC Personnel.

7. PROFESSIONAL SERVICES.

- 7.1 Services. RRC may obtain Professional Services which will only be provided and performed pursuant to a fully executed Amendment to the Contract or a separately issued Contract, and a statement of work describing the services, deliverables, fees, costs and expenses payable in connection with such services. A statement of work will become effective upon execution by authorized representatives of both Parties and will be subject to the terms and conditions of the Contract. A statement of work, if any, may be amended only upon written agreement between RRC and Knomatic.
- 7.2 Ownership of Improvements to Knomatic Software. Any improvements or modifications to the Hosted Services or Licensed Applications (“Knomatic Enhancements”) and associated intellectual property rights developed under the Contract will be owned by Knomatic, will constitute a portion of the Hosted Services or Licensed Applications, as applicable, and shall be subject to all applicable terms and conditions of the Contract.
- 7.3 Ownership of Deliverables Other Than Knomatic Enhancements. All deliverables and associated intellectual property rights other than Knomatic Enhancements which are created under the Contract by Knomatic shall be owned by Knomatic. Knomatic hereby grants to RRC a worldwide, non-exclusive, irrevocable right and license to use, modify, and create derivative works of any such deliverables for RRC’s internal business operations during the Term.
- 7.4 Sponsored IP. Notwithstanding the foregoing, any deliverables provided exclusively for RRC and all intellectual property rights related to the foregoing (collectively, “Sponsored IP”) shall be solely owned by RRC if agreed to and identified as Sponsored IP in the applicable statement of work.

8. CONFIDENTIALITY. “Confidential Information” means all tangible and intangible non-public information (whether written or otherwise recorded or oral) that is exchanged between the Parties. The recipient of Confidential Information may use it solely for performing activities contemplated under the Contract. The recipient shall not disclose any Confidential Information to any third party and shall protect Confidential Information by using the same degree of care, but no less than a reasonable degree of care, that the recipient uses to protect its own confidential information of a like nature. The recipient may disclose the Confidential Information to its affiliates, agents and independent contractors only with a need to know to fulfill the purpose of the Contract, and in such disclosure, recipient shall only disclose to those who have signed a nondisclosure agreement with at least as protective measures of the discloser’s rights as are contained within the Contract.

9. WARRANTIES AND DISCLAIMERS.

- 9.1 Hosted Services and Licensed Applications. Knomatic warrants that the Hosted Services and Licensed Applications will perform in all material respects as set forth in any applicable Documentation. Knomatic shall use commercially reasonable efforts to correct all material errors in the Hosted Services and Licensed Applications as soon as is reasonably possible or to replace the affected portion of the Hosted Services or Licensed Applications with a functionally-equivalent alternative.
- 9.2 Support/Professional Services. Except as otherwise agreed to by Amendment to the Contract or within a statement of work, Knomatic warrants for a period of thirty (30) days from the date of performance of Support/Professional Services that such Support/Professional Services will be performed with reasonable skill and care. For Support/Professional Services not performed as warranted in this provision and provided RRC has reported such non-conformance to Knomatic within thirty (30) days of performance of such non-conforming Support/Professional Services, Knomatic will, at its discretion, either correct any nonconforming Support/Professional Services or refund the relevant fees paid for the nonconforming Support/Professional Services.

- 10. TERM OF CONTRACT.** The Term of the Contract shall be a period of two (2) years, commencing on March 1, 2018. Extension of the Contract Term shall occur only through a fully executed Amendment to the Contract.
- 11. THIRD PARTY AND OPEN SOURCE SOFTWARE.** The Licensed Applications may contain or be distributed with open source software or other third-party software which may be covered by a different license. If open source software or third-party software is included in the Licensed Applications, the Contract does not apply to the open source software or third-party software, except that the warranty disclaimers and limitations of liability set forth in the Contract will apply to the extent not conflicting with the open source software and third-party software licenses. Information concerning the inclusion of the open source software and third-party software, if any, and the notices, license terms, and disclaimers applicable to that software will be provided with the Licensed Applications. If RRC is unable to locate such information, RRC shall contact Knomatic.
- 12. CHANGES IN THE HOSTED SERVICES AND LICENSED APPLICATIONS.** RRC acknowledges and agrees that Knomatic may, from time to time, and at Knomatic's sole discretion, without substantially changing or degrading the existing features, modify, enhance and/or expand the features and functionality of the Hosted Services and Licensed Applications. Knomatic may discontinue the Hosted Services and Licensed Applications or elements thereof, provided that Knomatic will provide one hundred twenty (120) days' prior written notice to RRC if such changes materially and substantially degrade the existing features and functionality of the Services. In such a case, RRC may terminate the Contract by providing written notice of its election to terminate the Contract at least thirty (30) days prior to the date on which the change noticed by Knomatic is set to occur.
- 13. MISCELLANEOUS PROVISIONS.** The software and technical data provided as part of the Licensed Applications is subject to the export laws and regulations of the United States, and RRC shall comply with all such export laws and regulations.