Denovo

☐ A check in this box indicates that this agreement has been changed from the original.

MANAGED SERVICES STATEMENT OF WORK

This **MANAGED SERVICES STATEMENT OF WORK** (*"Managed Services SOW"*), dated as of **1**st day of **September**, 2018 (*"Effective Date"*), is by and between DENOVO VENTURES LLC, a Colorado limited liability company (*"Denovo"*), and **City of Lincoln and Lancaster County, Nebraska**, a Political Subdivision of the State of **Nebraska** (the *"Client"*) (each a *"Party"* and together the *"Parties"*).

Pursuant to *Section 3 (Scope of Services) and the Master Services Agreement,* in the State of Nebraska Service Contract 73949 O4 dated February 8, 2018, Denovo and Client desire to enter this Statement of Work for the performance by Denovo of certain Consulting Services, described herein. This Statement of Work provides details of the Consulting Services, related products if any, definitions, Service-specific terms, and the Client's one-time and recurring fees.

To the extent other terms and conditions from the State of Nebraska Contract 73949 O4 attached hereto conflict with the terms and conditions stated herein, the parties agree that the terms in this document shall take precedence.

Effective Date*:* **September 1, 2018**

Delivery Period: **September 1, 2018** through **August 31, 2019**

1.   *Definitions.*

As used in this Statement of Work the following terms shall have the respective meanings set forth therein. Other terms used in this Statement of Work are defined in the context in which they are used and shall have the meanings therein indicated.

i.   *Agreement.* Each SOW and/or Order Document(s) combined with the corresponding Supplement and MSA shall constitute an independent contract

ii. *Annual Period.* Each twelve (12) month period of the SOW Term.

iii. *Change.* The addition, subtraction or change to any Services related to the SOW; a change that results in increased or reduced fees for applicable Services; and changes to the Service Levels not agreed to as part of the Statement of Work

iv. *Change Order Process.* The process by which Changes are made to the Services and more fully described in this Statement of Work

v. *Change Order Request* or *COR.* The form the Parties will use to communicate changes to the Services. The Change Order Process is defined in this Statement of Work.

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vi. ***Customer Care Portal.*** A web based service that allows Clients to report problems, request information and view system metrics

vii. ***Incident.*** An unplanned interruption or reduction in the quality of Services that adhere to severity levels set forth in this Statement of Work

viii. ***Initial Term.*** The period effective from the primary Service Start Date to the planned Services termination date

ix. ***In-Scope.*** Services that are covered under the base agreement between Denovo and Client

x. ***Out-Of-Scope.*** Services that are NOT defined as Services under the base agreement between Denovo and Client, and that may require an additional Statement of Work

xi. ***Roll-over.*** The dollar value of the Services available which was not consumed during the current month and is available for use in a future month during the Annual Period.

xii. ***Service.*** Generally, all of the services Denovo agrees to provide the Client as set forth in the SOW.

xiii. ***Service Start Date.*** The date Denovo notifies Client (in writing via email) of readiness and enables access to the Services for Client use, recurring invoicing begins

xiv. ***SOW Term.*** The period of time beginning with the Service Start Date stated in this Statement of Work and continuing through the end of all Initial Term(s) and any renewal term(s), unless Client access to the Services is earlier terminated pursuant to the terms of the Agreement

2. ***Term and Termination.***

The initial term of this Statement of Work is **One (1)** year following the Service Start Date, the **1ˢᵗ** day of **September** , 2018 with the option for three (3) additional one (1) year renewals, not to exceed the current State of Nebraska contract expiration date, unless terminated by either party without cause, i.e., for convenience, upon thirty (30) days written notice to the other party. Denovo may adjust pricing after the Initial Term upon thirty (30) days written notice to Client. The Clients are not obligated to accept a price escalation that is determined to not be fair and reasonable, and justifiable according to some type of economic indicator such as CPI or PPI. Denial of a price increase that is determined to not be fair and reasonable, or justifiable, will not result in the City paying the early termination fee of 40% as indicated above.

If Client terminates this Statement of Work without cause, i.e., for convenience, during the Initial Term of this Statement of Work, or if Denovo terminates this Agreement due to any uncured default by Client, Client shall be liable for the following fees:

All amounts owed for Services provided by Denovo up to and including the date of termination

- One hundred percent (100%) of all deferred payments

- An early termination charge equal to forty percent (40%) of the Monthly Recurring Charges identified in this Statement of Work multiplied by the number of months remaining in the Initial Term

The Client may terminate this SOW in whole or in part when funding in not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the City of Lincoln and/or Lancaster County. In the event of unavailability of funds to pay any amounts due

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under the SOW, client shall immediately notify Denovo and the SOW shall terminate without penalty or expense to the client. Upon termination, the client shall pay Denovo for any approved and documented services or products completed.

3.   **Services.**

Denovo will provide the Client with JD Edwards functional/development support services. These services are normally provided remotely. Denovo can provide on-site services if requested by Client. On-site services will normally require a full week (40 hour) commitment from the Client.

Client may engage Denovo to provide project based services under this SOW. For these services Client will submit a ticket request and a Denovo Project Manager will reach out to discuss project requirements. Project based services are not covered under the Denovo SLA's.

Support and Escalation - Denovo will respond to Client's tickets under the provisions of Service Level Agreement, and with best effort after hours or on holidays. Client must open tickets via email to our Help Desk, or by phone if email is unavailable. Each call will be assigned a Trouble Ticket number for tracking.

Service outside Normal Working Hours - Emergency services (Severity 1) will be performed outside of the hours of 8:00 am – 5:00 pm Mountain Time Monday through Friday, including public holidays.

4.   **Client Support Policy.**

The following table shows the targets for response and resolution times for each priority level.

Incident / Severity Definitions	Severity Level	Response Time	Resolution Time	Escalation Threshhold
Client's production systems are stopped or so severely impacted that Client cannot reasonably continue work. Client experiences a complete loss of service. The impacted operation is mission critical to the business and the situation is an emergency. A Severity 1 service request has one or more of the following characteristics: 1. Environment is down and/or inaccessible by Client's End Users 2. Data is corrupted, resulting in a complete halt to Client's business operations 3. Environment hangs indefinitely, causing indefinite delays for critical resources or response Denovo will use reasonable efforts to respond to Severity 1 service requests within 15 Minutes. Denovo will work 24x7 until the Severity 1 service request is resolved, a reasonable work-around is put in place, or as long as useful progress can be made. Client must provide Denovo with a contact during this 24x7 period to assist with data gathering, testing, and applying fixes. Client is required to propose this severity classification with great care, so that valid Severity 1 situations obtain the necessary resource allocation from Denovo.	**Severity 1**	15 Minutes	Best Effort	1 Hour

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Incident / Severity Definitions	Severity Level	Response Time	Resolution Time	Escalation Threshhold
Client experiences a severe loss of service. Important features of the production systems are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.	Severity 2	2 Hours	Best Effort	4 Hours
Client experiences a minor loss of service. The impact is an inconvenience, which may require a workaround to restore functionality.	Severity 3	12 Hours	Best Effort	48 Hours
Client requests information, enhancement, or documentation clarification regarding a Denovo Service, but there is no impact on the production systems. Client experiences no loss of service.	Severity 4	24 Hours	Best Effort	72 Hours

At the time Denovo accepts a service request, Denovo will record an initial severity level of the service request based on the above severity definitions. Denovo's initial focus, upon acceptance of a service request, will be to resolve the issues underlying the service request. The severity level of a service request may be adjusted.

If, during the service request process, the issue no longer warrants the severity level currently assigned based on its current impact on the production systems, then the severity level will be downgraded to the severity level that most appropriately reflects its current impact.

If, during the service request process, the issue warrants the assignment of a higher severity level than that currently assigned based on the current impact on the productionsystems, then the severity level will be upgraded to the severity level that most appropriately reflects its current impact.

Client's shall ensure that the assignment and adjustment of any severity level designation is accurate based on the current impact on the production systems. Customer acknowledges that Denovo is not responsible for any failure to meet performance standards caused by Customer's misuse or misassignment of severity level designations.

For service requests that are escalated to the next level manager, the Denovo support analyst will engage the Denovo service request escalation manager who will be responsible for managing the escalation. The Denovo service request escalation manager will work with the Client to develop an action plan and allocate the appropriate Denovo resources. If the issue underlying the service request continues to remain unresolved, the Client may contact the Denovo service request escalation manager to review the service request and request that it be escalated to the next level within Denovo. To facilitate the resolution of an escalated service request, the Client is required to provide contacts within the Client's organization that are at the same level as that within Denovo to which the service request has been escalated.

Client questions or requests for an exception to the Denovo Client Support policy must be made via a Change Order Request.

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Client Support Tiers - The following details and describes our Support Tier levels:

Support Tier	Description
Tier 1 Support	All support incidents begin in Tier 1, where the initial trouble ticket is created. The issue is identified and clearly documented, and basic hardware/software troubleshooting is initiated.
Tier 2 Support	All support incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support on hardware/software issues can be provided by more experienced engineers.
Tier 3 Support	Support Incidents that cannot be resolved by Tier 2 Support are escalated to Tier 3, where support is provided by our most experienced, senior engineers who have the ability to collaborate with 3rd party (vendor) support engineers to resolve the most complex issues.

5.   *Assumptions and Limitations.*

In order for Client's existing environment to qualify for Services, the following requirements must be met:

- All Servers must be at the currently supported OS level for the EnterpriseOne Version and Tools Release installed, and have all of the latest patches and Critical Updates installed.
- All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running a supported version as it relates to the EnterpriseOne version of the software, and have all of the latest Microsoft Service Packs and Critical Updates installed. This is especially important as it relates to supported browser versions.
- All Server and Desktop Software must be Genuine, Licensed and Vendor-Supported.
- The environment will have a currently licensed, up-to-date and Vendor-Supported Server-based Antivirus Solution protecting all Servers and Developer Workstations.
- Client shall advise Denovo of regulatory requirements or obligations which may affect Denovo's provision of the Services.
- Client agrees to comply with each third party end-user license agreement ("EULA").

The following services and costs are not included in this Statement of Work and are Out-Of-Scope:
- The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
- The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees of any kind.
- The cost to bring Client's environment up to minimum standards required for Services.
- Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors not under control of Denovo employees.
- Maintenance of other Application software packages besides EnterpriseOne.
- Programming (modification of software code) and program (software) maintenance unless as specified in the services table.
- Training Services of any kind unless specficed in the services table.

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6. *Service Fees*

The monthly fee for Services is $2,000. Client will consume Services based on the hourly fee schedule defined below. Any unused service fees will Roll-over to the next month. Any Roll-over Services will be available for use during the Annual Period. Client will request service on an as needed basis. Client will intiate payment for the monthly service fee within 30 calendar days following each month, upon receipt of supporting documentation. If Client consumes more than the monthly allotment for services during a month Client will be billed the greater amount. ..

Billing Rates - GSA Contract GS-35F-0026Y		
Roles	Ad Hoc Bill Rate**	Project Bill Rate
Senior Principal	$206.40/hour	$185.76/hour
Principal Engineer	$195.24/hour	$175.72/hour
Senior Engineer	$178.50/hour	$160.65/hour

* Denovo rates listed above apply to this Statement of Work only

**Ad Hoc Bill Rates apply to situations where consulting resources services are provided while working under the direction of the Client's manager or project manager. The Project Bill Rates apply to Denovo-led projects where consulting services are being provided in support of a statement of work where Denovo has full responsibility for its successful completion.

7. *Pricing Assumptions.*

Client is responsible for proper execution of the agreement, any omission of pre-requisites or addition of services by Client shall result in a project Change Order Request, or support will be best effort on a next business day basis.

Additional Services requested by Client and added to the SOW within 90 days of Client's and Denovo's acceptance of the SOW ("Acceptance") will be priced according to the fees listed at the time of SOW Acceptance. Any additional Services requested by Client after 90 days from the date of Client and Denovo's Acceptance of the SOW will be subject to the then current rates for such Services.

Any requested Change to the Client's environment once it has been implemented may be subject to time and material fees.

Additional Services may be added or deducted via the Change Order Request process as defined in *Section 10* of this Statement of Work.

It is understood that any Federal, State or Local Taxes applicable shall be added to each invoice for Services or materials rendered under this Agreement. Client shall pay any such taxes unless a valid exemption certificate is furnished to Service Provider for the State of use.

Denovo

8.   Statement of Work Acceptance.

Subject to the notice provisions below, Denovo reserves the right to modify or discontinue Services and to introduce new Services and features. Denovo may make available to Client all new services and features offered to all of our other clients. Denovo may, in our sole discretion, discontinue a Service at any time. Denovo will give the Client 90 days notice of the discontinuance of a Service. Discontinuance does not affect Orders accepted prior to the date of discontinuance, but new Orders for a Service will not be accepted after the date the Service is discontinued.

Denovo may, in our sole discretion, modify a Service from time to time, for example to work with new third party products and services and to stay current with changing standards. Denovo will give the Client 30 days written notice of the modification of a Service and of substantive modifications to a Service Description. Such modifications will affect both existing Services and new Orders. Within sixty (60) days of receipt of a notice of modification to a Service, Client may cancel Order(s) for that Service without liability for cancellation charges if the modification has made the Service materially less useful to Client.

9.   Change Order Process.

A Change Order Request ("**COR**") is the method by which either Party may communicate and eventually effectuate Changes to the Services. Please see the Change Order Request form.

The Client or Denovo may request Changes by initiating the Change Order Process. To initiate the Change Order Process, the Party requesting the Change must fill out the Change Order Request form attached hereto and submit it to the appropriate project leader of the other Party. The Change Order Request must at a minimum describe the requested Change in sufficient detail for the Client and Denovo to make a reasonable assessment of the request.

The Client and Denovo will review the Change Order Request promptly and follow up with each other as necessary for further clarification or to discuss the impact that the Change will have on the Services, deliverables, implementation schedule, Service Availability Levels, terms and conditions, and Client fees. A Change Order Request will not be effective nor will a Change be implemented unless the Change Order Request is executed by duly authorized representatives from both the Client and Denovo. Only the City of Lincoln and/or Lancaster County Board of County Commissioners may execute a change order for Client.

Upon mutual acceptance of the Change Order Request, it becomes part of the entire agreement between Denovo and the Client with respect to the subject matter hereof. Denovo will provide a copy of all mutually accepted Change Order Requests to the Client for future reference.

Each Party will be responsible for all costs and expenses incurred by it in participation of the Change Control Process unless otherwise agreed in writing. The failure of either Party to insist upon strict performance of the Change Order Request process for every Change shall not constitute a waiver of its rights as set forth in the Agreement, at law or equity.

10.   E-Verify.

In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Denovo agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility

Denovo

Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Denovo shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. Denovo shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

11.   *Indemnification*

Denovo shall indemnify and hold harmless the Client from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the Statement of Works that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including loss of use resulting therefrom and is caused in whole or in part by Denovo, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require Denovo to indemnify or hold harmless the Client for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the Client.

In any and all claims against the Client or any of its elected officials, members, officers or employees by an employee of Denovo, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation listed herein shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Denovo or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

12.   *Insurance*

Denovo agrees to the insurance provisions required for all City/County and Building Commissions contracts (see *Insurance Requirements for City, County, and Building Commission, copy attached hereto*).

13.   *Independent Contractor*

It is the express intent of the parties that this SOW shall not create an employer-employee relationship. Employees of Denovo shall not be deemed to be employees of the Client and employees of the Client shall not be deemed to be employees of Denovo. Denovo and the Client shall be responsible to their respective employees for all salary and benefits. Neither Denovo's employees nor the Client's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including, but not limited to, overtime, vacation, retirement benefits, workers' compensation, sick leave, or injury leave. Denovo shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

14.   *Notices.*
Wherever under the Agreement one Party is required or permitted to give notice to the other Party, such notice shall be in writing and shall be delivered personally, sent by facsimile transmission, sent by nationally recognized express courier, sent by certified mail (return receipt requested), or sent by email. Any such notice shall be deemed given when actually received and shall be addressed as follows:

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If to Client:

> City of Lincoln and Lancaster County
> 555 So. 10th Street
> Lincoln, NE 68508
> Attn: Brandon Kauffman
> Email: bkauffman@lincoln.ne.gov

If to Denovo:

> Denovo
> 6400 Lookout Road
> Suite 101
> Boulder, CO 80301
> Attention: Legal Department
> Email: legal-notices@denovo-us.com

With a copy to:

> Ireland Stapleton Pryor & Pascoe, PC
> 717 17th Street, Suite 2800
> Denver, Colorado 80202
> Attention: Michael R. Miller
> Email: mmiller@irelandstapleton.com
> Fax: 303-623-2062

Either Party may change its address for notices upon giving written notice of the change to the other Party in the manner provided above.

[SIGNATURE PAGE TO FOLLOW]

Denovo

IN WITNESS WHEREOF, Denovo and the Client have executed this Statement of Work as of the date set forth above.

DENOVO VENTURES, LLC

By: _Paul Hughes_
AB4902DA44D6427...

Name: _Paul Hughes_

Title: _CTO Cloud_

Date: _8/2/2018_

City of Lincoln

By: _____

Name: _____

Title: _____

Date: _____

Lancaster County, Nebraska

Board of County Commissioners:

_____

_____

_____

_____

_____

Date: _____

STATE OF NEBRASKA SERVICE CONTRACT ADDENDUM

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: (402) 471-6500
Fax: (402) 471-2089

PAGE 1 of 2	ORDER DATE 02/07/18
BUSINESS UNIT 65025015	BUYER NANCY STORANT (AS)

VENDOR NUMBER: 3426196

CONTRACT NUMBER
73949 O4

VENDOR ADDRESS:

DENOVO VENTURES LLC
DBA DENOVO
6400 LOOKOUT RD STE 101
BOULDER CO 80301-3377

THE CONTRACT PERIOD IS:

SEPTEMBER 27, 2016 THROUGH SEPTEMBER 30, 2019

THIS SERVICE CONTRACT HAS BEEN AMENDED PER THE FOLLOWING INFORMATION:

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE VENDOR/CONTRACTOR AND THE STATE OF NEBRASKA.

Contract to supply and deliver Managed Services to the State of Nebraska for the period September 27, 2016 through September 30, 2019 with the option to renew for Three (3) additional One (1) year periods.

Vendor Contact: Scott Sears
Phone: 206-310-0882
E-Mail: ssears@denovo-us.com

Addendum One (1) as attached. (ml 2/7/18)

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	MANAGED SERVICES MONTHLY SUBSCRIPTION In case of early termination - see SOW for cost terms. Initial Contract Period October 1, 2016 through September 30, 2019	68.0000	MO	6,300.0000	428,400.00
2	MANAGED SERVICES MONTHLY SUBSCRIPTION First Renewal Period October 1, 2019 through September 30, 2020	12.0000	MO	6,300.0000	75,600.00
3	MANAGED SERVICES MONTHLY SUBSCRIPTION Second Renewal Period from October 1, 2020 through September 30, 2021	12.0000	MO	6,300.0000	75,600.00
4	SENIOR PRINCIPAL ADDITIONAL HOURS Estimated Quantity	90.0000	HR	206.4000	18,576.00
5	PRINCIPAL ENGINEER	100.0000	HR	195.2400	19,524.00

BUYER

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STATE OF NEBRASKA SERVICE CONTRACT ADDENDUM

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: (402) 471-6500
Fax: (402) 471-2089

PAGE 2 of 2	ORDER DATE 02/07/18
BUSINESS UNIT 65025015	BUYER NANCY STORANT (AS)

VENDOR NUMBER: 3426196

CONTRACT NUMBER
73949 O4

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
	ADDITIONAL HOURS Estimated Quantity				
6	SENIOR ENGINEER ADDITIONAL HOURS Estimated Quantity	100.0000	HR	178.5000	17,850.00
7	TRAVEL EXPENSE	2,064.0000	$	1.0000	2,064.00
9	CONSULTING SERVICES HOURLY RATE FOR THE FOLLOWING ROLES: TOTAL PAYMENT ON THIS LINE NOT TO EXCEED $300,000	300,000.0000	$	1.0000	300,000.00

AD HOC BILL RATE:
SENIOR PRINCIPAL - $206.40/HR
PRINCIPAL ENGINEER - $195.24/HR
SENIOR ENGINEER - $178.50/HR

PROJECT BILL RATE:
SENIOR PRINCIPAL - $185.76/HR
PRINCIPAL ENGINEER - $175.72/HR
SENIOR ENGINEER - $160.65/HR

Total Order   **937,614.00**

BUYER INITIALS

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☒ A check in this box indicates that this agreement has been changed from the original.

MASTER SERVICES AGREEMENT
Addendum One to Contract
73949 O4

THIS MASTER SERVICES AGREEMENT (this "*MSA*"), dated as of the **8th** day of February 2018 ("*Effective Date*"), is by and between DENOVO VENTURES, LLC, a Colorado limited liability company ("*Denovo*"), and the State of Nebraska (the "*Client*") (each a "*Party*" and together the "*Parties*").

RECITAL

Client desires to engage Denovo to provide certain services, and Denovo desires to provide such services, pursuant to the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the recitals and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this MSA agree as follows:

1.   **Construction.** This MSA and the State of Nebraska's Terms and Conditions and Contract, hereinafter referred to as Agreement, sets forth the general terms and conditions of the Agreement. This Agreement is being entered into pursuant to Neb. Rev. Stat. §§ 73-507(1)(a) utilizing GSA Contract Number GS-35F-0026Y. For each Service Denovo offers, there is a Statement of Work that sets forth more specifically the Services and Service Levels Denovo will provide the Client. To the extent there are inconsistencies between the MSA and the SOW, the SOW will govern and control over the MSA with regard to the specifications and work to be performed. The headings shall be disregarded in construing or interpreting the Agreement.

2.   **Definitions.** Capitalized terms not otherwise defined herein or in the applicable SOW or Change Order shall be defined as follows:

(i)   **Aggregated Data.** Any aggregated and statistical data derived from the operation of the Services, including, without limitation, the number of records in the Services, the number and types of transactions, configurations, and reports processed in the Services and the performance results for the Services

(ii)   **Agreement.** Each SOW, applicable Change Order, State of Nebraska Terms and Conditions and Contract, Attachment 1, and other documents executed pursuant to the MSA, combined with the MSA

(iii)   **Change.** The in-scope addition, subtraction or change to any Services related to the Agreement; a change that results in increased or reduced Fees for applicable Services; changes to the Service Levels, or any other change to the Agreement

(iv)   **Change Order.** A fully executed Change Order Request form that details the Change agreed to by the Parties

(v)   **Change Order Request.** A formal request submitted by one Party to the other for a Change, as further described in Section 17 below

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(vi)   **Client Applications.** All software programs, including any source code for such programs, that the Client or the Client's clients provide in connection with the Agreement

(vii)   **Client Data.** Client's Confidential Information and all text, files, images, graphics, information, data, illustrations, personal data, video, audio, photographs, and other content and material in any format, provided or uploaded by the Client in connection with the Agreement (but not including Work Product or any material provided by Denovo to Client and later provided or uploaded by Client)

(viii)   **Confidential Information.** Any confidential information or data, internal business information including, without limitation, business plans, strategies, goals, financial statements, business methods and procedures, services provided, contractual arrangements, client and customer lists, work product, contact information, Trade Secrets (as defined below), personally identifiable information, information protected under the Health Insurance Portability and Accountability Act, and any other information protected by statute or designated as confidential by either Party is considered confidential

(ix)   **Denovo Intellectual Property.** All Intellectual Property that was developed by Denovo or on Denovo's behalf prior to performance of, or independent of, this Agreement or that is generally applicable to or useable by any of Denovo's other customers or for its business in general regardless of when developed, or that Denovo may, in connection with the performance of Services hereunder, employ, provide, modify, create or acquire or otherwise obtain rights in

(x)   **Dispute.** Any dispute, claim or controversy arising out of or relating to the Agreement, including without limitation a dispute regarding an alleged breach of the Agreement

(xi)   **Expenses.** Reasonable out-of-pocket expenses that Denovo incurs, including, without limitation, all reasonable travel, meal, lodging and mileage expenses

(xii)   **Fees** or **Charges.** Any fees or charges for the Services, software products or other products described in the Agreement

(xiii)   **Infringement Claim.** Third party claims against the Client that any Work Product or Denovo Intellectual Property infringes a presently existing United States copyright, patent or trademark or constitutes misappropriation of unlawful disclosure or use of a third party's trade secrets

(xiv)   **Initial Term.** A period of two (2) years commencing on the Effective Date

(xv)   **Intellectual Property.** Concepts, ideas, recommendations, methods, methodologies, procedures, processes, know-how and techniques, templates, programs, trademarks and service marks, Trade Secrets, copyrights, patents, software, inventions, discoveries, software, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, development tools (including without limitation general purpose consulting and software tools), utilities and routines, logic, integrations, coherence and methods of operation of systems, and all other intellectual property and improvements to any of the foregoing

(xvi)   **Law.** Any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any Federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, foreign or international

(xvii)   **Order Document.** A license or other agreement between Denovo and the Client or between a third-party vendor and the Client for specific software, as well as related terms and conditions in connection with the Services that require a software product license

(xviii) **Service Levels.** The service levels, if any, that Denovo will adhere to as set forth in the applicable SOW

(xix) **Services.** Generally, all of the services Denovo agrees to provide the Client as set forth in any applicable SOW or Change Order including, without limitation, hosting, managed services, SaaS, software licensing, disaster recovery and consulting services

(xx) **Statement of Work** or **SOW.** A statement of work that sets forth more specifically the Services and Service Levels Denovo will provide the Client, a schedule of Fees and Charges, as well as any further terms and conditions that may apply to the Services Denovo will provide the Client

(xxi) **Successive Term.** A renewal term.

(xxii) **Term.** The Initial Term and all renewals

(xxiii) **Termination Date.** The date on which the Agreement is terminated or expires pursuant to the terms of the Agreement

(xxiv) **Trade Secrets.** Trade secrets as defined under C.R.S. § 7-74-102, including, without limitation, various computer systems and programs, techniques, developments, improvements, inventions, and processes that are, or may be, produced in the course of the applicable Party's operations, including any other information not generally known concerning such Party or its operations, including products, suppliers, markets, sales, internal costs, costs, margins, profits, client needs and lists, and the pricing information made available in the Agreement or other information acquired, disclosed, or made known to employees or agents while in the employ of such Party, which, if used or disclosed by a party other than such Party, could adversely affect such Party's business or give competitors an advantage

(xxv) **Work Product.** Any software modifications, enhancements and/or interfaces, together with related specifications, design documents, flow charts, documentation, training manuals, reports, and other tangible work product specifically developed by Denovo for the Client in accordance with the Agreement, but not including Denovo Intellectual Property

3. **Scope of Services.** Denovo shall provide the Services to Client as set forth in the applicable SOW. The Services may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the Client. The Services are exclusively for the use of the Client and any of its employees or authorized users in accordance with the terms of the Agreement and may not be used by subsidiaries or other affiliates of the Client unless specifically permitted by the Agreement.

4. **Payment.**

(a) **Fees and Expenses.** Each SOW shall set forth the Fees that are to be paid to Denovo. In addition, each SOW shall set forth the Expenses (or types of Expenses to the extent the amount of such Expenses aren't known) that are to be reimbursed by Client.

(b) **Invoices.** Denovo will provide the Client with an invoice from time to time or when specified in the SOW. Each invoice shall set forth the Fees and Expenses owed to Denovo in reasonable detail, the SOW reference numbers, and, when applicable, the number of hours spent by Denovo personnel in providing the Services during the period invoiced. Payment terms are net thirty (30) days from the date of invoice.

(c) **Method of Payment.** Unless otherwise agreed to in writing by both Parties, all amounts to be paid to Denovo under the Agreement shall be paid in U.S. dollars and may be made using electronic or automated clearing

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house (ACH), automatic bill pay mechanisms, or by federal wire transfer to the account or accounts designated in the applicable invoice. If not such account is designated in an invoice, payment should be made to the account below:

> Denovo Ventures, LLC
> ACH/Wire: Pacific Mercantile Bank
> ABA/Routing #122242869
> Acct: #42696200
> Beneficiary PMB Customer Account Name: Denovo Ventures Holdings, LLC

> For international wire instructions please contact AR@Denovo-us.com

5.   *Term and Termination.*

(a)   *Term.* This AGREEMENT shall commence on the Effective Date and remain in effect for the Initial Term unless earlier terminated in accordance with the Agreement. Unless otherwise terminated, this AGREEMENT may be renewed for up to three (3) additional one (1) year renewals at the end of the Initial Term and after each renewal upon mutual consent. Either Party may terminate this AGREEMENT during a renewal by providing the other Party fifteen (15) days advance written notice of termination. Notwithstanding the foregoing or any other provision herein, if a SOW or Order Document is still in effect, the Term shall be extended until such SOW or Order Document expires or is terminated

(b)   *Termination for Cause by Either Party.* Either Party may terminate the Agreement (and all SOWs) for the other Party's material breach of the Agreement after giving at least thirty (30) days prior written notice identifying specifically the basis for such notice and referring to this Section of this MSA unless the breaching Party cures such breach within such thirty (30)-day period.

(c)   *Termination for Cause by Denovo.* In addition to any termination rights set forth in an SOW regarding termination of such SOW, either party may terminate the Agreement and any SOW at any time immediately upon notice if a Party discloses another Party's Confidential Information in violation of the Agreement.

(d)   *Termination for Insolvency.* Either Party may immediately terminate the Agreement (and all SOWs) in whole or in part if the other Party:

(i)   Makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they mature, or ceases operating in the normal course of business.

(ii)   Has a receiver or trustee appointed by a court over the Party or any substantial part of the Client's assets.

(iii)   Becomes insolvent or is unable to pay its debts as they become due.

(iv)   Authorizes, applies for or consents to the appointment of a trustee or liquidator of all or a substantial part of its assets or has proceedings seeking such an appointment commenced against it which are not terminated within ninety (90) days of such commencement.

(v)   Has any substantial part of its property subjected to any levy, seizure, assignment or sale for, or by any creditor or governmental agency without said levy, seizure, assignment or sale being lifted, released, reversed or satisfied within ten (10) days.

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(vi)   Files a voluntary petition under any chapters of the United States Bankruptcy Code or any other insolvency law or an involuntary proceeding has been commenced by any Party against the Party under any one of the chapters of the United States Bankruptcy Code or any other insolvency law and (A) the proceeding has been pending for at least sixty (60) days; or (B) the Party has consented, either expressly or by operation of law, to the entry of an order for relief; or (C) the Party has been decreed or adjudged a debtor or equivalent.

6.   **Employment Matters.**

(a)   **Denovo Staffing.** Denovo shall assign personnel to the Client account that possess the training, education, expertise and skill levels appropriate for the Services to be provided by such personnel. Denovo reserves the right to determine which of its personnel shall be assigned to perform Services, and to replace or reassign such personnel during the Term; provided, however, that Denovo, subject to scheduling and staffing considerations, shall use good faith efforts to honor the Client's request for or lawful objection to specific individuals.

(b)   **Client Staffing.** Client shall assign personnel to the performance of Client responsibilities that possess the appropriate training, education, expertise and skill levels to perform such Client responsibilities. Client reserves the right to determine which of its personnel shall be assigned to perform Client responsibilities, and to replace or reassign such personnel during the Term; provided that, the Client shall ensure that the performance by such personnel of Client responsibilities does not adversely affect the ability of Denovo to perform its obligations under the Agreement.

(c)   **Non-solicitation.** To the extent permitted by law, neither Denovo nor the Client shall, during the Term of the Agreement and for a period of twelve (12) months following expiration or termination of the Agreement, except as may be agreed to in writing by both parties, knowingly solicit for employment, offer employment to, employ or hire as an independent contractor the other Party's employees, agents, or subcontractors who were involved in the contract procurement or performance,. The Parties acknowledge that the damages caused by a breach of this Section would be difficult to ascertain.

(d)   **Independent Contractor.** Denovo shall provide Services to Client as an independent contractor and nothing contained herein shall be construed to create a relationship of employer-employee or principal-agent between Denovo and Client. Neither Party is, nor shall represent itself to be, an agent, partner, fiduciary, joint venture, co-owner or representative of the other.

7.   **Assignment and Subcontracting.**

(a)   Neither Party shall assign or subcontract any portion of the Agreement without the express and prior written consent of the other Party. Notwithstanding the foregoing, in the event of a merger, acquisition, or sale of substantially all its assets, or reorganization, Denovo may assign the Agreement or any portion thereof to a successor-in-interest or any affiliate of Denovo that has the ability to perform the assigned obligations and has agreed to do so in writing. Denovo agrees to cooperate and assist the State in amending the contract to reflect the assignment or subcontract.

(b)   Notwithstanding Section 7(a), Denovo may subcontract any of its duties under the Agreement, including, without limitation, any SOW, or portion thereof, to a subcontractor in the ordinary course of business; provided, however, Denovo will remain liable to the extent provided herein for its performance under the Agreement. Denovo is required to provide notice for any subcontractors who will perform services solely in connection with this Agreement.

(c)   Notwithstanding 7(a) the Client may contract with other entities for the same or similar work.

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(d)   The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions of the Master Services Agreement may not be amended, however an agency may use a Statement of Work to address their requirements. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

8.   *Confidentiality.*

(a)   *General.* To the extent that either Party comes into possession of any Confidential Information of the other Party in connection with the Agreement or otherwise, such Party may use the Confidential Information of the other Party solely for the purposes of the Agreement, and shall not disclose such Confidential Information to any third party without the prior written consent of the other Party.

(b)   *Exclusions.* Notwithstanding any provision herein to the contrary, Confidential Information shall not include information that (i) is or becomes publicly available (other than by breach of the Agreement), (ii) was disclosed to the receiving Party on a non-confidential basis from a source other than the disclosing Party, which the receiving Party reasonably believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing Party, (iii) is developed by the receiving Party independent of and without reference to any Confidential Information of the disclosing Party, or was known by the receiving Party prior to any disclosure of such information made by the disclosing Party, in each case as evidenced by the receiving Party's written records, or (iv) is disclosed with the written consent of the owner of the Confidential Information.

(c)   *Protection.* Each Party shall maintain the confidentiality of the Confidential Information of the other Party using at least the same degree of care as it employs in maintaining the confidentiality of its own Confidential Information, but in no event less than a reasonable degree of care.

(d)   *Remedies.* If a Party discloses or uses (or threatens to use or disclose) any Confidential Information of the other Party in breach of the confidentiality protections under the Agreement, the other Party shall have the right, in addition to any other remedies available, to seek injunctive relief to enjoin such acts, as the Parties acknowledge that any other available remedies may be inadequate.

(e)   *Trade Secrets.* Denovo employs Trade Secrets that contain privileged or confidential commercial or financial information that would result in a competitive disadvantage if disclosed without prior permission by Denovo. Because it would cause irreparable harm to Denovo if any of its Trade Secrets were known to its competitors, to the extent that Client learns any of Denovo's Trade Secrets, Client shall not disclose or use such Trade Secrets in its own business or for the benefit of any party other than Denovo.

(f)   *Compelled Disclosure.* Notwithstanding the above, the receiving Party shall not be in violation of this confidentiality obligation with regard to a disclosure that was in response to a valid order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or any other administrative or legal process, or by applicable regulatory or professional standards, provided that the receiving Party provides the disclosing Party with reasonably prior written notice of such disclosure in order to permit the disclosing Party to seek confidential treatment of such information.

9.   *Ownership of Intellectual Property.*

(a)   *Denovo Ownership.*

(i)   Denovo shall retain all right, title and interest in and to Denovo Intellectual Property.

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(ii)   All rights, title and interest in Work Product shall vest in Denovo unless otherwise expressly provided in the applicable SOW.

(iii)   Except for any license expressly granted in the Agreement, neither the Client nor any third party shall acquire any right, title or interest in or to Denovo Intellectual Property or Work Product.

(b)   **Client Ownership.** The Client shall retain all right, title and interest in and to the Client Data. Client hereby grants to Denovo limited license to use the Client Data solely to the extent necessary for Denovo to perform the Services hereunder.

(c)   **Infringement Indemnity.**

(i)   **Infringement Indemnity.** Denovo shall defend and hold harmless the Client against Infringement Claims so long as the Client promptly notifies Denovo in writing of the Infringement Claims. Denovo shall provide such defense at its expense and will pay any costs or damages that may be finally awarded by a court of competent jurisdiction against the Client. Denovo will not indemnify the Client, however, if the Infringement Claim is caused by (i) the Client's misuse or modification of the Work Product, Denovo Intellectual Property or other deliverables in a manner that causes the infringement; (ii) the Client's use of the Work Product, Denovo Intellectual Property or other deliverables in combination with any hardware, software or information not owned or developed by Denovo; (iii) the Client's failure to use corrections or enhancements to such Work Product, Denovo Intellectual Property or other deliverables made available by Denovo, (iv) the Client's distribution, marketing or use for the benefit of third parties of such Work Product, Denovo Intellectual Property or other deliverables or (v) information, specifications, software or materials provided by the Client or a third party. If any Work Product is, or in Denovo's judgment is likely to become, the subject of an Infringement Claim, Denovo, at its expense and option, shall either (a) procure the right for the Client to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing, or (d) direct the return of the Work Product and refund to the Client the Fees paid for such Work Product less a reasonable amount for the Client's use of the Work Product up to the time of return.

(ii)   **Exclusive Remedy.** The foregoing constitutes the Client's sole and exclusive remedy and Denovo's entire liability with respect to Infringement Claims.

10.   **Indemnification.**

(a)   **General.** The Parties shall have the following general indemnity obligations:

(i)   Denovo shall indemnify, defend and hold harmless the Client and its officers, directors, members, managers, employees, subcontractors and agents from and against any and all taxes, interest, penalties and fines imposed by any governmental agency that are Denovo's responsibility hereunder.

(ii)   Denovo shall indemnify, defend and hold harmless the Client and its officers, directors, members, managers, employees, subcontractors and agents from and against any and all losses arising from claims by third parties relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence or willful misconduct of Denovo, its personnel or agents in connection with the performance of the Services under the Agreement.

(b)   **Procedure.** To receive any indemnities specified in this Section, Client must promptly notify Denovo in writing of a claim or suit and provide reasonable cooperation (at Denovo's expense) and full authority to defend

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or settle the claim or suit. Denovo shall have no obligation to indemnify Client under any settlement made without Denovo's written consent.

11.   *Limitation of Liability; Disclaimer of Warranties.* Unless otherwise specifically stated in an SOW with respect to the Services described in, or products or software provided or licensed under, such SOW, the following limitations of liability and disclaimers of warranties shall apply to the Agreement:

(a)   *Limitation of Liability.* EXCEPT IN CONNECTION WITH DENOVO'S OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION HEREIN OR DENOVO'S INDEMNIFICATION OF INFRINGEMENT CLAIMS HEREIN, OR ANY CLAIMS COVERED BY INSURANCE (TO THE EXTENT OF DENOVO'S INSURANCE COVERAGE), OR ANY CLAIMS ARISING FROM DENOVO'S NEGLIGENCE OR WILFULL MISCONDUCT (COLLECTIVELY, THE "*EXCLUDED CLAIMS*"), IF DENOVO SHALL BE LIABLE TO THE CLIENT FOR ANY MATTER RELATING TO OR ARISING FROM THE AGREEMENT, WHETHER BASED UPON AN ACTION OR CLAIM IN CONTRACT, WARRANTY, EQUITY, NEGLIGENCE, INTENDED CONDUCT OR OTHERWISE, THE AGGREGATE AMOUNT OF DAMAGES RECOVERABLE AGAINST DENOVO WITH RESPECT TO ANY AND ALL BREACHES, PERFORMANCE, NONPERFORMANCE, ACTS OR OMISSIONS HEREUNDER, OR ANY REASON WHATSOEVER, WILL NOT EXCEED THE AGGREGATE AMOUNT OF FEES ACTUALLY PAID BY THE CLIENT TO DENOVO UNDER THE SOW PURSUANT TO WHICH DENOVO IS PERFORMING THE SERVICES OR SELLING THE PRODUCTS GIVING RISE TO SUCH BREACH FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE MONTH IN WHICH THE CLAIM AROSE. EXCEPT FOR BREACH OF CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO THE EXCLUDED CLAIMS, DENOVO'S MAXIMUM LIABILITY FOR ALL DAMAGES SHALL BE LIMITED TO ONE MILLION DOLLARS AND NO/100 ($1,000,000.00). WITH RESPECT TO CONFIDENTIALITY OBLIGATIONS, DENOVO'S LIABILITY SHALL BE LIMITED TO TWO MILLION DOLLARS AND NO/100 ($2,000,000.00). FOR THE AVOIDANCE OF DOUBT, THIS LIMITATION OF LIABILITY SHALL NOT SERVE TO REDUCE RECOVERY OF ANY INSURANCE PROCEEDS AVAILABLE UNDER ANY POLICY OF INSURANCE REQUIRED OR PROVIDED HEREUNDER.

(b)   *Exclusion of Damages.* IN NO EVENT SHALL EITHER PARTY OR ITS PERSONNEL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND OPPORTUNITY COSTS) NOR SHALL THEY BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE.

(c)   *Subcontractor Liability.* The exclusions and limitations of liability under the Agreement will operate to the benefit of those subcontractors used by Denovo in the ordinary course of business (but not including any subcontractors who perform services for Denovo solely in connection with this Agreement) under the Agreement to the same extent that such provisions operate to the benefit of Denovo. Any limitations of liability hereunder will be computed for Denovo and such subcontractors in the aggregate. Denovo's subcontractors shall be deemed third-party beneficiaries of this Section.

(d)   *Disclaimer of Warranties*. DENOVO WARRANTS THAT IT WILL PROVIDE THE SERVICES SET FORTH IN THE SOW ACCORDING TO THE TERMS OF THE AGREEMENT. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THE AGREEMENT, DENOVO MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND DENOVO CANNOT AND DOES NOT GUARANTY ANY RESULT OR THE EFFECTIVENESS OF THE SERVICES, WORK PRODUCTS, DENOVO INTELLECTUAL PROPERTY OR OTHER GOODS SOLD OR SOFTWARE LICENSED HEREUNDER. ANY SERVICES, WORK PRODUCT, DENOVO INTELLECTUAL PROPERTY OR OTHER GOODS SOLD OR SOFTWARE LICENSED HEREUNDER ARE PROVIDED "AS IS," AND ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED.

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12.   **Insurance.** Denovo shall at its own expense maintain commercial automobile liability insurance and either commercial general liability insurance or, if necessary, professional liability insurance with minimum coverage as outlined below:

(a)   **Business Automobile Liability.** Covering all vehicles that Denovo owns, hires, or leases with a limit of no less than $1,000,000 per accident/employee.

(b)   **Commercial General Liability.** Including Contractual Liability Coverage, with coverage for products liability, completed operations, property damage and bodily injury, including death, with a minimum limit of no less than $1,000,000 each occurrence and a minimum limit of $2,000,000 in the aggregate.

(c)   **Professional Liability Insurance.** Including Errors and Omissions coverage with a limit of no less than $5,000,000 per occurrence and in the aggregate.

13.   **Dispute Resolution.**

(a)   **General.** In the event of any Dispute, one Party shall notify the other Party in writing of the Dispute in sufficient detail to put the other Party on notice of the nature of the Dispute. The Parties shall work together in good faith first to informally resolve the Dispute internally by escalating it as necessary to progressively higher levels of the administrative structure.

(b)   **Equitable Relief.** Notwithstanding other provisions of this Section, either Party may seek preliminary or other equitable relief from a court of law of competent jurisdiction at any time.

14.   **Authority.** Each Party represents and warrants to the other that (i) it is duly organized, validly existing and in good standing under the laws of the state in which it is organized or incorporated, (ii) it has all requisite power and authority to enter into the Agreement and to perform its obligations hereunder, and the execution of the Agreement and (iii) it has been duly authorized to consummate the transactions contemplated in the Agreement.

15.   **Law and Regulation.** Each Party shall be responsible for obeying Laws applicable to its business, including, without limitation, data privacy, intellectual property, employment, and tax laws.

16.   **Change Order Process.** A Change Order Request is the method by which either Party may communicate and eventually effectuate in-scope Changes to the Services outlined in the applicable SOW. The Client or Denovo may request in-scope Changes by initiating the Change Order process. To initiate the Change Order process, the Party requesting the in-scope Change must fill out the then-current Change Order Request form and submit it to the appropriate project leader of the other Party. The Change Order Request must at a minimum describe the requested in-scope Change in sufficient detail for Client and Denovo to make a reasonable assessment of the request.

The Client and Denovo will review the Change Order Request promptly and follow up with each other as necessary for further clarification or to discuss the impact that the in-scope Change will have on the Services, deliverables, implementation schedule, Service Levels, terms and conditions, Fees and other provisions of the Agreement. A Change Order Request will not be effective nor will a in-scope Change be implemented unless the Change Order Request is executed by duly authorized representatives from both Client and Denovo.

Upon mutual acceptance of the Change Order Request, it becomes part of the entire Agreement between Denovo and Client with respect to the subject matter thereof. If required, a contract amendment will also be created based on the mutually accepted Change Order Request.

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Each Party will be responsible for all costs and expenses incurred by it in participation of the in-scope Change Order process unless otherwise agreed in writing. The failure of either Party to insist upon strict performance of the Change Order process for every in-scope Change shall not constitute a waiver of its rights as set forth in the Agreement, at law or equity.

17.   **Miscellaneous.**

(a)   **Modification.** The Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to the Agreement which specifically states that it amends the Agreement.

(b)   **Waiver.** The failure of either Party to insist upon strict performance of any of the provisions contained in the Agreement shall not constitute a waiver of its rights as set forth in the Agreement, at law or in equity, or a waiver of any other provisions or subsequent default by the other Party.

(c)   **Survival.** The provisions of Sections 1, 2, 4, 6(c), 8, 9, 10, 11, 13, 15 and 18 shall survive, notwithstanding the termination or invalidity of the Agreement for any reason.

(d)   **Entire Agreement.** The Agreement, including, without limitation, any addenda, exhibits, attachments, supplements, SOWs, Change Orders and Schedules, constitutes the entire agreement between Denovo and the Client with respect to the subject matter hereof and supersedes all other oral and written representations, understandings or agreements relating to the Agreement.

(e)   **Force Majeure.** Neither Party shall be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions of the other Party or third parties, fire or other casualty, act of God, strike or labor dispute not involving a Parties employees, war or other violence, or any law, order or requirement of any government agency or authority.

(f)   **Notices.** Wherever under the Agreement one Party is required or permitted to give notice to the other Party, such notice shall be in writing and shall be delivered personally, sent by facsimile transmission, sent by nationally recognized express courier, sent by certified mail (return receipt requested), or sent by email. Any such notice shall be deemed given when actually received and shall be addressed as follows:

If to Client:

      State of Nebraska Administrative Services
      1526 K Street, Suite 250
      Lincoln, NE 68508
      Attention: Byron Diamond - Director___
      Email: Byron.Diamond@nebraska.org__
      Fax:402-471-4157_____

If to Denovo:

      Denovo
      6400 Lookout Road
      Suite 101
      Boulder, CO 80301
      Attention: Legal Department
      Email: legal-notices@denovo-us.com

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With a copy to:

> Ireland Stapleton Pryor & Pascoe, PC
> 717 17th Street, Suite 2800
> Denver, Colorado 80202
> Attention: Michael R. Miller
> Email: mmiller@irelandstapleton.com
> Fax: 303-623-2062

Either Party may change its address for notices upon giving written notice of the change to the other Party in the manner provided above.

(g) **No Third Party Beneficiaries.** Nothing contained in the Agreement is intended to confer upon any person (other than the Parties hereto, the indemnified parties specifically identified in Section 10, and any subcontractors expressly mentioned elsewhere in the Agreement) any rights, benefits or remedies of any kind or character whatsoever, and, except as otherwise specifically stated herein, no person shall be deemed a third party beneficiary under or by reason of the Agreement.

(h) **Severability.** If any term or condition of the Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of the Agreement are declared severable.

(i) **Governing Law; Jurisdiction.** The Agreement, shall be governed by, and construed in accordance with, the laws of the State of Nebraska (without giving effect to the choice of law principles thereof). Each Party hereby irrevocably consents and waives any objection to the personal jurisdiction and venue of the state and federal courts for the Lincoln, Lancaster County, Nebraska.

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[SIGNATURE PAGE TO FOLLOW]

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Denovo

IN WITNESS WHEREOF, Denovo and the Client have executed this MSA as of the date set forth above.

DENOVO VENTURES, LLC

By: _____

Name: ___Marty Snellow___

Title: ___CEO___

Date: ___2/1/18___

STATE OF NEBRASKA DEPARTMENT OF ADMINISTRATIVE SERVICES

By: ___Douglas Wilken___

Name: ___DOUGLAS WILKEN___

Title: ___MATTERIEL ADMIN___

Date: ___9 FEB 18___

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CONSULTING SERVICES STATEMENT OF WORK – SOW 030

This **CONSULTING STAFF AUGMENTATION SERVICES STATEMENT OF WORK** (*"Consulting Services SOW"*), dated as of the **8th** day of **February, 2018** (*"Effective Date"*), is by and between DENOVO VENTURES LLC (Denovo), a Colorado limited liability company (*"Denovo"*), and **State of Nebraska and the Nebraska Department of Administrative Services** (the *"Client"*) (each a *"Party"* and together the *"Parties"*).

Pursuant to **Section 3 (Scope of Services),** in the Master Services Agreement (MSA), Denovo and Client desire to enter this Statement of Work for the performance by Denovo of certain consulting services, described herein. This Statement of Work provides details of the Services, related Products if any, Definitions, Service-specific terms, the responsibilities of the party's one-time and recurring fees, Change Control Process, and third party license agreements as applicable.

Term of the Statement of Work: **Two years from the Effective Date**

Delivery Period: **February 8, 2018** through **February 7, 2020**

Description of Scope of Services: Upon Client's acceptance, Denovo will provide to you consulting staff resources who at your direction, will assist you with the following services:

1. **Applications and or Technology Consulting Services:** This Statement of Work shall include but is not limited to services supporting the JD Edwards and Oracle Cloud applications and the underlying technology (Servers, Network, database, etc.).

2. *Delivery Services:* Assist you with the following:

    2.1   Scope 1 Provide functional support of JDE Enterprise One applications to assist Client to complete business requirements as define by Client.

    2.2   Scope 2 Provide developers to work at your direction on augmenting the existing functionality of the systems to meet the business requirements as defined by Client.

    2.3   Scope 3 Provide technical assistance to work at your direction to assist in supporting the systems identified by Client.

    2.4   Scope 4 Provide functional, technical and development assistance to work at your direction to assist in supporting the Oracle Cloud systems identified by Client.

3. *Consulting Coordination Services:* Denovo will provide the following services to the Client:

    3.1.   Serve as single point of contact for your project manager to provide a communication mechanism to address issues regarding Denovo staffing, performance, scheduling, or request for changes to the services being provided.

    3.2.   Assist your Project Manager with the following:

        3.2.1.   Coordinate on-boarding and off-boarding of Denovo Consulting staff to your project(s)

        3.2.2.   Consolidate (if needed) and provide status report(s) to agree upon intervals, not more than weekly, comprised of weekly accomplishments; task to be completed the following week; issues and risks identified by the Denovo Consultant(s); and hours worked for the week.

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3.3. Escalate issues identified by Denovo Consultants to your project manager.

3.4. Conduct monthly financial review with your project manager.

3.5. At the conclusion of the services, provide an Engagement Summary Report outlining the work completed, open issues or risks and recommendations.

4. **Client Project Obligation**

4.1. Maintain the properly configured hardware and operating system platform to support the services.

4.2. Obtain software licenses under separate contract for any necessary software and hardware programs before the commencement of services and installing all current software and hardware updates.

4.3. Maintain annual technical support for the software and hardware under separate contract throughout the term of the services.

4.4. Provide Denovo with full access to relevant internal functional, technical and business resources with adequate skills and knowledge.

4.5. Provide, for all Denovo resources performing services at your site, a safe and healthful workspace (e.g. a workspace that is free from recognized hazards that are causing, or likely to cause, death or serious physical harm, a workspace that has proper ventilation, sound levels acceptable for resources performing services in the workspace, and ergonomically correct work stations, etc.).

4.6. Provide any notices, and obtain any consent, required for Denovo to perform services.

4.7. Limit Denovo's access to any production environment or shared development environments to the extent necessary for Denovo to perform services and when access is required notify Denovo of when it will be entering production and shared development environments.

4.8. Limit Denovo's access to any protected or sensitive data and when access is required notify Denovo of when it will be accessing protected or sensitive data environments.

4.9. Be responsible for day to day management of the project work schedule and associated outputs.

4.10. Provide a single point of contact for all communication from Denovo regarding the project.

4.11. All requests for assignment of Denovo resource(s) shall be directed to the Denovo Staff Augmentation Coordinator and not the Denovo Consultant(s).

5. **Project Requirements**

5.1. This is a time and materials project. Client will be billed for actual billable hours attributed to the reporting, project time and for any expenses identified in a SOW associated with the project.

5.2. If the Client requires part time resource(s) which is defined as less than 40 hours a week to conduct "ad hoc" services, Client acknowledges that Denovo resource(s) may not be immediately available and assigned to the Client upon Client's request. Denovo will assign resource(s) as soon as possible to the Client who shall possess the requisite skill and competencies required to perform the assigned task in the Delivery Services section of this Statement of Work.

5.3. The estimated billable hours and associated fees contained herein are by definition an estimate only, and are not guaranteed to be sufficient to complete all services.

5.4. The fee estimate is an estimate only, and is based on a mutually agreed assistance model from the limited information provided by you and presumes your active participation.

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5.5.   On-site services shall be conducted at your facilities located at Lincoln NE or other mutually agreed upon location(s).

5.6.   Services may also be conducted at Denovo's facilities or Consultant's home office unless mutually agreed otherwise by both parties.

5.7.   Denovo's standard documentation format is acceptable for any documentation prepared during the performance of the services.

5.8.   Payment to Denovo will be based upon the effort (hours) expended and is not tied to any subsequent task outputs or deliverables that are a result of the services.

6.   **Client Project Management**

6.1.   Client shall designate a project manager who shall be solely responsible for (i) project management associated with the services and (ii) direction of services provided to the Client by Denovo. Denovo will provide services under the direction of such project manager, who shall make all decisions in connection with anything relating to project management and direction of the services.

7.   **Billing Rates**

Senior Principal	$206.40/hour	$185.76/hour
Principal Engineer	$195.24/hour	$175.72/hour
Senior Engineer	$178.50/hour	$160.65 /hour

Should the estimated fees be exhausted before services under this SOW are completed, Denovo will halt services until additional funds have been allocated per the Change Order Request process as defined in Section 10. If a Change Order is not completed, Denovo will consider the services complete and final invoices will be processed.

**Ad Hoc Bill Rates apply to situations where consulting resources services are provided while working under the direction of the Client's manager or project manager.   The Project Bill Rates apply to Denovo-led projects where consulting services are being provided in support of a statement of work where Denovo has full responsibility for its successful completion.

Fee Payment Schedule for Consulting Services. Denovo will invoice the Client on a time and materials weekly basis for Consulting Services delivered, commencing one week after the Service Start Date at the rates specified in Section 7 (Billing Rates) which shall be due upon receipt.

1.   *Method of Payment.* Unless otherwise agreed to in writing by both parties, all amounts to be paid to Denovo under this Statement of Work shall be paid in U.S. dollars and may be made using electronic or automated clearing house (ACH), automatic bill pay mechanisms, or by federal wire transfer to the account or accounts designated below.

Denovo Ventures, LLC
ACH/Wire: Pacific Mercantile Bank

Denovo

ABA/Routing: #122242869   Acct: #42696200
Beneficiary PMB Customer Account Name: Denovo Ventures Holdings, LLC

2.   For International Wire instructions, please contact: AR@Denovo-us.com

8. Service Fee

In-scope services may be added, revised or deducted via the Change Order Request process as defined in Section 10 of this Statement of Work and amendment of the contract.

It is understood that any Federal, State or Local Taxes applicable shall be added to each invoice for Services or materials rendered under this Agreement. Client shall pay any such taxes unless a valid exemption certificate is furnished to Service Provider for the State of use.

9.   Expenses

Expenses are not included in the rates noted above. Expenses will be charged to the Client based on the following table:

Expenses (reimbursed according to the following schedule)		
Expense	Action*	Detail/Notes
Airfare	Actual Cost	Per State of Nebraska Policy
Meals	Actual Cost	Per State of Nebraska Policy
Lodging	Actual Cost	Per State of Nebraska Policy
Auto Mileage	Actual Cost	Per State of Nebraska Policy
Parking	Actual Cost	Per State of Nebraska Policy
Taxis, Car Rentals, Gasoline	Actual Cost	Per State of Nebraska Policy
Laundry (if onsite for 5+ straight days)	Not Reimbursed	
Other incidental expenses	Not Reimbursed	

*Actual Cost, Per Diem, Not to Exceed, or Not Reimbursed

10.   Change Order Process

The Client or Denovo may request in-scope Changes by initiating the Change Order Process. To initiate the in-scope Change Order Process, the Party requesting the in-scope Change must fill out the Change Order Request form attached hereto and submit it to the appropriate project leader of the other Party. The Change Order Request must at a minimum describe the requested in-scope Change in sufficient detail for the Client and Denovo to make a reasonable assessment of the request.

Upon mutual acceptance the Change Order shall be executed by duly authorized representative from both the Client and Denovo and then becomes part of the entire agreement through an amendment between Denovo and the Client with respect to the subject matter hereof. Denovo will provide a copy of all mutually accepted Change Order Requests to the Client for future reference.

Denovo

Each Party will be responsible for all costs and expenses incurred by it in participation of the Change Control Process unless otherwise agreed in writing. The failure of either Party to insist upon strict performance of the Change Order Request process for every in-scope Change shall not constitute a waiver of its rights as set forth in the Agreement, at law or equity.

11. **Other Terms and Conditions**

[SIGNATURE PAGE TO FOLLOW]

Denovo

IN WITNESS WHEREOF, Denovo and the Client have executed this Statement of Work as of the date set forth above.

DENOVO VENTURES, LLC

By: _____

Name: Marty Snella

Title: CEO

Date: 2/1/18

State of Nebraska Department of Administrative Services

By: _____

Name: Douglas Wilker

Title: MATERIEL ADMIN

Date: 9 FEB 18