



State of West Virginia
Agency Purchase Order

CORRECT ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES, AND SHIPPING PAPERS. QUESTIONS CONCERNING THIS ORDER SHOULD BE DIRECTED TO THE DEPARTMENT CONTACT.

Order Date: 06-26-2024

Order Number:	APO 0210 4407 ISC2400000015 1	Procurement Folder:	1449301
Document Name:	Quickbase Emergency Purchase (OT24173)	Reason for Modification:	
Document Description:	Quickbase Emergency Purchase (OT24173)		
Procurement Type:	Agency Emergency Purchase		
Buyer Name:	Andrew C Lore		
Telephone:	304-352-4944		
Email:	andrew.c.lore@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	

VENDOR		DEPARTMENT CONTACT	
Vendor Customer Code:	VS0000040847	Requestor Name:	Heather D Abbott
QUICKBASE INC 290 CONGRESS ST 4TH FL BOSTON MA 02210 US		Requestor Phone:	(304) 957-8136
Vendor Contact Phone:	4404742079	Requestor Email:	heather.d.abbott@wv.gov
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	Not Entered		
#3	Not Entered		
#4	Not Entered		

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	WV OFFICE OF TECHNOLOGY BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Total Order Amount:	\$53,000.00
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DEPARTMENT AUTHORIZED SIGNATURE
 SIGNED BY: Andrew C Lore *CL*
 DATE: 2024-06-26
 ELECTRONIC SIGNATURE ON FILE

Extended Description:

AGENCY EMERGENCY PURCHASE

At the direction of the Chief Information Officer, the West Virginia Office of Technology (WVOT) and the Vendor, Quickbase Inc., agree to enter into an emergency contract for the one-time purchase of Quickbase licensing, per the attached documentation.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	43230000	50.00000	EA	840.000000	42000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Enterprise (User-Annual)

Extended Description:

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	43230000	1.00000	EA	6000.000000	6000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Essential Enablement Service Package

Extended Description:

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	43230000	20.00000	HOUR	250.000000	5000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Non-recurring Enablement Service Hours

Extended Description:

	Document Phase	Document Description	Page
ISC2400000015	Final	Quickbase Emergency Purchase (OT24173)	3

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

STATE OF WEST VIRGINIA
ORDER OF PRECEDENT AND ADDITIONAL TERMS AGREEMENT

THIS ORDER OF PRECEDENT AND ADDITIONAL TERMS AGREEMENT, by and between [Quickbase, Inc.] (“Vendor”) and the [West Virginia Office of Technology] (“State”) is intended to provide an order of priority for the various documents that comprise the contract resulting from the agency-delegated procurement identified as APO ISC2400000015, (the “Contract”) and to add certain required contract terms to the Contract.

The Parties Agree as follows:

- 1. Order of Precedence:** The Contract is composed of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section.

Contract Documents:

- a. This Addendum - First in priority.
- b. West Virginia Software as a Service Addendum attached hereto as Exhibit A – Second Priority
- c. Vendor Quote and Terms attached hereto as Exhibit B – Third Priority

- 2. Additional Contract Terms.** The following additional terms are added to the Contract.

- a. **VOID CONTRACT CLAUSES** – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.
- b. **LATE PAYMENT PENALTIES** – Any language in any document imposing any interest or charges due to late payment is deleted.
- c. **BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider’s employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.
- d. **ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or

services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

e. **PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency’s policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>

f. **ISRAEL BOYCOTT:** Vendor understands and agrees that pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

g. **NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

h. **LIMITATION OF LIABILITY:** The State and the Vendor have agreed to a limitation of liability in the amount of \$1 million, which sufficiently protects the State’s risk.

The Parties are signing this Agreement on the date stated below the signature.

VENDOR: [Quickbase, Inc.]	West Virginia Office of Technology
Shawna Deane	
Printed Name: _____	Printed Name: <u>Heather Abbott</u>
Signature: _____	Signature: <u>Heather Abbott</u>
Title: <u>Associate General Counsel</u>	Title: <u>Chief Information Officer</u>
Date: <u>6/25/2024</u>	Date: <u>06/26/2024</u>

Exhibit A – OTHER STATE DOCUMENTS
(If none included then there are no other state documents)

Software as a Service Addendum

In addition to the Terms of Service attached hereto, the parties agree as follows in connection with the provision and use of the Quickbase Service:

1. Definitions:

Acceptable alternative data center location means a country that is identified as providing equivalent or stronger data protection than the United States, in terms of both regulation and enforcement. DLA Piper's Privacy Heatmap shall be utilized for this analysis and may be found at <https://www.dlapiperdataprotection.com/index.html?t=world-map&c=US&c2=IN>.

Authorized Persons means the service provider's employees, contractors, subcontractors or other agents who have responsibility in protecting or have access to the public jurisdiction's personal data and non-public data to enable the service provider to perform the services required.

Data Breach means the unauthorized access and acquisition of unencrypted and unredacted personal data that compromises the security or confidentiality of a public jurisdiction's personal information and that causes the service provider or public jurisdiction to reasonably believe that the data breach has caused or will cause identity theft or other fraud.

Individually Identifiable Health Information means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Non-Public Data means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the public jurisdiction because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

Personal Data means data that includes information relating to a person that identifies the person by first name or first initial, and last name, and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, state identification card); financial account information, including account number, credit or debit card numbers; or protected health information (PHI).

Protected Health Information (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g,

records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.

Public Jurisdiction means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

Public Jurisdiction Data means all data created or in any way originating with the public jurisdiction, and all data that is the output of computer processing or other electronic manipulation of any data that was created by or in any way originated with the public jurisdiction, whether such data or output is stored on the public jurisdiction's hardware, the service provider's hardware or exists in any system owned, maintained or otherwise controlled by the public jurisdiction or by the service provider.

Public Jurisdiction Identified Contact means the person or persons designated in writing by the public jurisdiction to receive security incident or breach notification.

Restricted data means personal data and non-public data.

Security Incident means the actual unauthorized access to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a public jurisdiction's unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

Service Provider means the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.

Software-as-a-Service (SaaS) means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

2. Data Ownership: The public jurisdiction will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access public jurisdiction user accounts or public jurisdiction data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the public jurisdiction's written request.

3. Data Protection and Privacy: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of public jurisdiction information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of public jurisdiction information and comply with the following conditions:

- a) The service provider shall implement and maintain appropriate administrative, technical and physical security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. In Appendix A, the public jurisdiction shall indicate whether restricted information will be processed by the service provider. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind. The service provider shall ensure that all such measures, including the manner in which personal data and non-public data are collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Addendum and shall survive termination of the underlying contract.
- b) The service provider represents and warrants that its collection, access, use, storage, disposal and disclosure of personal data and non-public data do and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations, policies and directives.
- c) The service provider shall support third-party multi-factor authentication integration with the public jurisdiction third-party identity provider to safeguard personal data and non-public data.
- d) If, in the course of its engagement by the public jurisdiction, the service provider has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, the service provider shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the service provider's sole cost and expense. All data obtained by the service provider in the performance of this contract shall become and remain the property of the public jurisdiction.
- e) All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data.
- f) Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit, in accordance with recognized industry practice. The public jurisdiction shall identify data it deems as non-public data to the service provider.
- g) With delivery of the solution and instructions, the service provider shall provide the public jurisdiction documentation providing specific security roles and responsibilities and best practices for implementation of security controls for the service provider's application based upon the solicitation. These security roles shall be made a part of this contract.
- h) At no time shall any data or process – that either belong to or are intended for the use of a public jurisdiction or its officers, agents or employees — be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the public jurisdiction.

- i) The service provider shall not use or disclose any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- j) Data Location. For non-public data and personal data, the service provider shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S. Storage of public jurisdiction data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to *store* public jurisdiction data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. With agreement from the public jurisdiction, this term may be met by the service provider providing its services from an acceptable alternative data center location, which agreement shall be stated in Appendix A. The Service Provider may also request permission to utilize an acceptable alternative data center location during a procurement's question and answer period by submitting a question to that effect. The service provider shall permit its personnel and contractors to access public jurisdiction data remotely only as required to provide technical support.

4. Security Incident or Data Breach Notification: The service provider shall inform the public jurisdiction of any confirmed security incident or data breach.

- a) Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as defined by law or contained in the contract. Discussing security incidents with the public jurisdiction shall be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes defined by law or contained in the contract.
- b) Security Incident Reporting Requirements: The service provider shall report a confirmed Security Incident as soon as practicable, but no later than twenty-four (24) hours after the service provider becomes aware of it, to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at <https://apps.wv.gov/ot/ir/Default.aspx>, and (3) the public jurisdiction point of contact for general contract oversight/administration. The following information shall be shared with the public jurisdiction: (1) incident phase (detection and analysis; containment, eradication and recovery; or post-incident activity), (2) projected business impact, and, (3) attack source information.
- c) Breach Reporting Requirements: Upon the discovery of a data breach or unauthorized access to non-public data, the service provider shall immediately report to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at <https://apps.wv.gov/ot/ir/Default.aspx>, and the public jurisdiction point of contact for general contract oversight/administration.

5. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of the service provider.

- a) Immediately after being awarded a contract, the service provider shall provide the public jurisdiction with the name and contact information for an employee of service provider who shall serve as the public jurisdiction's primary security contact and shall be available to assist the public jurisdiction twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a data breach. The service provider may provide this information in Appendix A.
- b) Immediately following the service provider's notification to the public jurisdiction of a data breach, the parties shall coordinate cooperate with each other to investigate the data breach. The service provider agrees to fully cooperate with the public jurisdiction in the public jurisdiction's handling of the matter, including, without limitation, at the public jurisdiction's request, making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law and regulation.
- c) Within 72 hours of the discovery, the service provider shall notify the parties listed in 4(c) above, to the extent known: (1) date of discovery; (2) list of data elements and the number of individual records; (3) description of the unauthorized persons known or reasonably believed to have improperly used or disclosed the personal data; (4) description of where the personal data is believed to have been improperly transmitted, sent, or utilized; and, (5) description of the probable causes of the improper use or disclosure.
- d) The service provider shall (1) cooperate with the public jurisdiction as reasonably requested by the public jurisdiction to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and prevent any further data breach at the service provider's expense in accordance with applicable privacy rights, laws and regulations and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- e) If a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state or federal law; (3) a credit monitoring service (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed \$500,000 or five times the amount paid pursuant to this contract; and (5) complete all corrective actions as reasonably determined by service provider based on root cause. The service provider agrees that it shall not inform any third party of any data breach without first obtaining the public jurisdiction's prior written consent, other than to inform a complainant that the matter has been forwarded to the public jurisdiction's legal counsel and/or engage a third party with appropriate expertise and confidentiality protections for any reason connected to the data breach. Except with respect to where the service provider has an independent legal obligation to report a data breach, the service provider agrees that the public

jurisdiction shall have the sole right to determine: (1) whether notice of the data breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others, as required by law or regulation, or otherwise in the public jurisdiction's discretion; and (2) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation. The service provider retains the right to report activity to law enforcement.

6. Notification of Legal Requests: The service provider shall contact the public jurisdiction upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the public jurisdiction's data under this contract, or which in any way might reasonably require access to the data of the public jurisdiction. The service provider shall not respond to subpoenas, service of process and other legal requests related to the public jurisdiction without first notifying the public jurisdiction, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:

- a) In the event of a termination of the contract, the service provider shall implement an orderly return of public jurisdiction data within the time period and format specified in the contract (or in the absence of a specified time and format, a mutually agreeable time and format) and after the data has been successfully returned, securely and permanently dispose of public jurisdiction data.
- b) During any period of service suspension, the service provider shall not take any action to intentionally erase any public jurisdiction data.
- c) In the event the contract does not specify a time or format for return of the public jurisdiction's data and an agreement has not been reached, in the event of termination of any services or agreement in entirety, the service provider shall not take any action to intentionally erase any public jurisdiction data for a period of:
 - 10 days after the effective date of termination, if the termination is in accordance with the contract period
 - 30 days after the effective date of termination, if the termination is for convenience
 - 60 days after the effective date of termination, if the termination is for cause

After such period, the service provider shall have no obligation to maintain or provide any public jurisdiction data and shall thereafter, unless legally prohibited, delete all public jurisdiction data in its systems or otherwise in its possession or under its control.

- d) The public jurisdiction shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the Contract.
- e) The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the public jurisdiction. Data shall be permanently deleted and shall not be recoverable,

according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the public jurisdiction.

8. Background Checks: The service provider shall conduct criminal background checks in compliance with W.Va. Code §15-2D-3 and not utilize any staff to fulfill the obligations of the contract, including subcontractors, who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The service provider shall promote and maintain an awareness of the importance of securing the public jurisdiction's information among the service provider's employees and agents.

9. Oversight of Authorized Persons: During the term of each authorized person's employment or engagement by service provider, service provider shall at all times cause such persons to abide strictly by service provider's obligations under this Agreement and service provider's standard policies and procedures. The service provider further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of personal data by any of service provider's officers, partners, principals, employees, agents or contractors.

10. Access to Security Logs and Reports: The service provider shall provide reports to the public jurisdiction data access reporting through the QB Audit Service.

11. Data Protection Self-Assessment: The service provider shall perform a Cloud Security Alliance STAR Self-Assessment by completing and submitting the "Consensus Assessments Initiative Questionnaire" to the Public Jurisdiction Identified Contact. The service provider shall submit its self-assessment to the public jurisdiction prior to contract award and, upon request, annually thereafter, on the anniversary of the date of contract execution. Any deficiencies identified in the assessment will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

12. Data Center Audit: The service provider shall perform an audit of its data center(s) at least annually at its expense and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit. Any deficiencies identified in the report or approved equivalent will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

13. Change Control and Advance Notice: The service provider shall give 30 days, advance notice (to the public jurisdiction of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics.

14. Security:

- a) At a minimum, the service provider's safeguards for the protection of data shall include: (1) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (2) implementing network, device application, database and platform security; (3) securing information transmission, storage and disposal; (4) implementing authentication and access controls within media, applications, operating systems and equipment; (5) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (6) providing appropriate privacy and information security training to service provider's employees.
- b) The service provider shall execute well-defined recurring action steps that identify and monitor vulnerabilities and provide remediation or corrective measures. Where the service provider's technology or the public jurisdiction's required dependence on a third-party application to interface with the technology creates a critical or high risk, the service provider shall remediate the vulnerability as soon as possible. The service provider must ensure that applications used to interface with the service provider's technology remain operationally compatible with software updates.
- c) Upon the public jurisdiction's written request, the service provider shall provide a high-level network diagram with respect to connectivity to the public jurisdiction's network that illustrates the service provider's information technology network infrastructure.

15. Non-disclosure and Separation of Duties: The service provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of public jurisdiction data to that which is absolutely necessary to perform job duties.

16. Import and Export of Data: The public jurisdiction shall have the ability to securely import, export or dispose of data in standard format in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the public jurisdiction to import or export data to/from other service providers identified in the contract (or in the absence of an identified format, a mutually agreeable format).

17. Responsibilities: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the cloud services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the service provider.

18. Subcontractor Compliance: The service provider shall ensure that any of its subcontractors to whom it provides any of the personal data or non-public data it receives hereunder, or to whom it provides any personal data or non-public data which the service provider creates or receives on behalf of the public jurisdiction, agree to the restrictions, terms and conditions which apply to the service provider hereunder.

19. Right to Remove Individuals: The public jurisdiction shall have the right at any time to require that the service provider remove from interaction with public jurisdiction any service provider representative who the public jurisdiction believes is detrimental to its working relationship with the service provider. The public jurisdiction shall provide the service provider with notice of its determination, and the reasons it requests the removal. If the public jurisdiction signifies that a potential security violation exists with respect to the request, the service provider shall immediately remove such individual. The service provider shall not assign the person to any aspect of the contract without the public jurisdiction's consent.

20. Business Continuity and Disaster Recovery: The service provider shall provide a business continuity and disaster recovery plan executive summary upon request. Lack of a plan will entitle the public jurisdiction to terminate this contract for cause.

21. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

22. Web Services: The service provider shall use web services exclusively to interface with the public jurisdiction's data in near real time when possible.

23. Encryption of Data at Rest: The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data.

24. Subscription Terms: Service provider grants to a public jurisdiction a license to:

- a. Access and use the service for its business purposes;
- b. For SaaS, use underlying software as embodied or used in the service; and
- c. View, copy, upload, download (where applicable), and use service provider's documentation.

25. Equitable Relief: Service provider acknowledges that any breach of its covenants or obligations set forth in Addendum may cause the public jurisdiction irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the public jurisdiction is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the public jurisdiction may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Addendum to the contrary.

AGREED:

Name of Agency: West Virginia Office of Technology Name of Vendor: Quickbase, Inc.


Version 9-17--19

Signature: Heather Abbott

Title: Chief Information Officer

Date: 06/26/2024

Shawna Deane

DocuSigned by:

Signature: 6779F837FAD349E...

Title: Associate General Counsel

Date: 6/25/2024

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. Required information not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Service Provider/Vendor: Quickbase, Inc.

Name of Agency: WVOT

Agency/public jurisdiction's required information:

- 1. Will restricted information be processed by the service provider?
Yes
No
- 2. If yes to #1, does the restricted information include personal data?
Yes
No
- 3. If yes to #1, does the restricted information include non-public data?
Yes
No
- 4. If yes to #1, may the service provider store public jurisdiction data in a data center in an acceptable alternative data center location, which is a country that is not the U.S.?
- 5. Yes
No
- 6. Provide name and email address for the Department privacy officer:
Name: Misty Peal, misty.peal@wv.gov
- 7. Email address: _____

Vendor/Service Provider's required information:

- 6. Provide name and contact information for vendor's employee who shall serve as the public jurisdiction's primary security contact:
Name: Elyse Gunn, Senior Manager, Governance, Risk & Compliance
Email address: egunn@quickbase.com
Phone Number: 781-731-9078

Exhibit B – VENDOR QUOTE
(and scope of work if applicable)



Customer Name: State of West Virginia
Quote #: Q-52790

Quickbase AE: Jen Bensi
Telephone:
Email: jbensi@quickbase.com

ORDER FORM

CONTACT INFORMATION	
Bill to: State of West Virginia ATTN: OT Enterprise Services 1900 Kanawha E Boulevard State Capitol, Room East-119 Charleston, West Virginia 25305 United States Email: otes@wv.gov	Ship to: State of West Virginia ATTN: Deb Harris 1900 Kanawha E Boulevard State Capitol, Room East-119 Charleston, West Virginia 25305 United States Email: drharris@k12.wv.us

PAYMENT INFORMATION	
Net Payment Terms: Net 30	Currency: USD
Payment Method: PO	Applicable PO Number, if any:
SUBSCRIPTION INFORMATION	
Subscription Term Start Date: 06-29-2024	Order Effective Date: Subscription Term Start Date
Subscription Term End Date: 06-28-2025	
Written Notice to Cancel Auto Renew: 30 Days	

SUBSCRIPTION PLAN SUMMARY			
Product	Quantity	Billing Frequency	Annual Fees
Enterprise (User - Annual)		Annual	\$42,000.00
Users - Enterprise-User	50		
Essential Enablement Service Package	1	Annual	\$6,000.00
Non-Recurring Enablement Service Hours	20	One-Time	\$5,000.00
TOTAL FEES:			\$53,000.00

Descriptions for certain products listed above are available at <http://www.quickbase.com/product-descriptions>. If purchasing FastField, the following terms apply to the FastField products: <https://www.quickbase.com/fastfield-mobile-forms-addendum>.

Enterprise User includes unlimited Applications, 100 Integration Reads/user/day, 10GB Application Space, 300GB Attachment Space, 3-year Audit Data Retention, Advanced Encryption, and ALM Sandbox

Terms and Conditions:

The agreement (the "Agreement") between the parties consists of this Order Form and either the Quickbase terms of service set forth at <http://www.quickbase.com/terms-of-service> (the "Terms of Service") as the same may be updated from time to time by Quickbase or, if Customer and Quickbase have entered into a separate signed agreement covering the use and provision of the Quickbase Service, such separate signed agreement. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Terms of Service or the separate signed agreement, as applicable.



Customer Name: State of West Virginia
Quote #: Q-52790

Quickbase AE: Jen Bensi
Telephone:
Email: jbens@quickbase.com

ORDER FORM

Each party represents and warrants that this Order is executed by a duly authorized representative and the Agreement constitutes the legal, valid and binding obligation of such party.

For Quickbase, Inc.

DocuSigned by:

6779F837FAD349E...

By: _____

Print Name:

Shawna Deane

Print Title:

Associate General Counsel

Date:

6/25/2024

For Customer: West Virginia Office of Technology

By: _____

Heather Abbott

Print Name: Heather Abbott

Print Title: Chief Information Officer

Date: 06/26/2024

Exhibit C – ADDITIONAL VENDOR DOCUMENTS

QUICKBASE TERMS OF SERVICE

These “**Terms of Service**” govern Quickbase’s provision, and any customer’s access to and use, of any Services (as defined below). By (1) signing a copy of these Terms of Service, (2) clicking a consent box on a Quickbase website indicating acceptance of these Terms of Service, or (3) consenting to an order form with Quickbase or a Quickbase-authorized reseller (an “**Authorized Source**”) that references these Terms of Service, Customer agrees and becomes a party to these Terms of Service. These Terms of Service are effective as of the date of consent (in the case of an online consent box) or the date of last signature (in the event the parties exchange physical or digital copies) (“**Effective Date**”) and are by and between Quickbase, Inc., having its principal place of business at 255 State Street, Boston, MA 02109, USA (“**Quickbase**”) and the customer indicated in the online consent process, order form or executed copy of these Terms of Service (“**Customer**”). “**Agreement**” means these Terms of Service, including any attachments and any documents incorporated by reference herein.

1. DESCRIPTION OF SERVICES. Any Hosted Service, Support Service, Professional Service, or AI Tool is a “Service.” As used herein, “Intellectual Property” means all registered and unregistered patent, copyright, trademark, trade secret, and other intellectual property.

2. HOSTED SERVICE.

2.1. Scope. “**Hosted Service**” means Quickbase’s cloud-based, application development and integration platform as a service. Applications developed by Customers hosted on the Hosted Service are referred to as “**Customer Applications**.” Quickbase may update the Hosted Service from time to time and use of new features or functionality may require Customer to elect to use those new features and pay additional fees, as set forth in a new Order (defined below). Hosted Service includes any and all functionalities, features, content, displays, look and feel, and interfaces and/or workflow, which are provided on or through the Hosted Service, excluding any and all Support Services, Enablement Services, and Professional Services.

2.2. Subscription. Subject to the terms and conditions of this Agreement (including Customer’s timely payment of applicable fees) and the applicable Order, Quickbase grants to Customer during the Term a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right to allow Users to remotely access and use the Hosted Service, solely for Customer’s internal business purposes (the “**Hosted Service Subscription**”). The Hosted Service Subscription is limited to the applicable subscription plan, entitlements, and tiers purchased by Customer in, either: (a) the applicable signed order form (for annual subscribers); (b) the billing module (for monthly subscribers); or (c) a written order that the Customer has placed with an Authorized Source and which Quickbase has accepted in writing (an “**Authorized Source Order**”) (each, an “**Order**”). “**User**” means Customer’s or its Affiliate’s permanent or temporary employee, consultant, client, external user, contractor or agent, to whom Customer and Quickbase (or Authorized Source) grants access to the Hosted Service through unique Access Credentials (as defined herein). Customer will be responsible for any and all uses of the Hosted Service by any Users on behalf of Customer or any Affiliates of Customer, or otherwise occurring under Access Credentials assigned to Users of Customer or its Affiliates, but no Affiliate of Customer will have independent rights under the Agreement unless the Affiliate enters into a separate Order with Quickbase or an Authorized Source, in which case the rights and responsibilities of such Affiliate and its Users will be governed by the Order or Authorized Source Order with the Affiliate and these Terms of Service. “**Affiliate**” means any entity that controls, is controlled by, or is under common control with a party to this Agreement, where control means equity ownership of fifty percent or greater interest in the voting shares held by an entity. Customer will also be responsible for any and all uses of the Hosted Service by any Anonymous Visitor. “**Anonymous Visitor**” means anyone that accesses Customer Applications, which applications Customer has configured for access without authentication.

2.3. Restrictions. Except as otherwise agreed in writing by the parties, Customer will not: (a) modify or create derivative works of either the Hosted Service or Deliverables (as defined in Section 3.6.1) (except in the ordinary course of creating or maintaining applications); (b) reverse engineer, decompile, disassemble, inspect, or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Hosted Service or Deliverables, or the code delivered to a web-browser related to the Hosted Service; (c) sell, lease, sublicense, distribute, resell, or otherwise commercially exploit the Hosted Service or Deliverables, (d) interfere with or disrupt the integrity or performance of the Hosted Service or the data contained therein or disrupt any servers or networks connected to the Hosted Service; (e) remove, alter or obscure any proprietary notices associated with the Hosted Service or Deliverables; (f) provide false, out-of-date, or incomplete information to Quickbase, including in connection with billing or account registration, or fail to promptly update such information; (g) use the Hosted Service or any Deliverable in any manner inconsistent with this Agreement, including Quickbase’s Acceptable Use Policy available via <https://www.quickbase.com/acceptable-use-policy> (“**Acceptable Use Policy**”), which is incorporated in its entirety into this Agreement; or (h) access or use the Hosted Service or any Deliverable in violation of any applicable laws, including any export laws or regulations. Customer is responsible for all actions of its Users, including any use restriction violations under this Agreement.

2.4. No Sharing of Logins. Each User must use a unique login and password to access the Hosted Service (“**Access Credentials**”). Sharing of Access Credentials between Users is prohibited. Customer may not revoke and reassign Users on a regular or systematic basis to circumvent fees. Unless specified in an Order, Customer may not provide access to the Hosted Service in a manner that avoids incurring licensing or subscription fees or other charges, including access provided through a separate system, portal or other interface. No User may take actions which result in the User’s access to (including attempts to access) the Hosted Service from more than one computer at any one time. In limited circumstances, such as managing integrations or workflows, Quickbase allows for the provision of a shared account, sometimes referred to as a service account.

These accounts should be appropriately named and tied to a real email address owned by Customer. Customer is responsible for securing accounts in accordance with Customer's internal security policies and practices.

2.5. **Unauthorized Access.** Customer will immediately notify Quickbase if it learns of, or suspects, any unauthorized access to or use of the Hosted Service. Quickbase reserves the right, in its sole discretion and without liability to Customer, to take any action Quickbase deems necessary or reasonable to ensure the security of the Hosted Service and Customer's Access Credentials, including terminating Customer's access, requiring password changes, or requesting additional information to authorize activities related to Customer's account. Customer is solely responsible for: (a) the security and proper use of its Access Credentials, and must take all steps necessary to ensure that Access Credentials are kept secure, confidential, used properly and not disclosed to unauthorized persons; and (b) all activities and charges incurred in connection with Access Credentials, and activity taking place under such Access Credentials, where such charges and activities were originated using Access Credentials of the Customer. Quickbase is authorized to accept Access Credentials as conclusive evidence that the Customer, or its Users, have accessed or otherwise used the Hosted Service.

2.6. **Support Services.** During the term of the Hosted Service Subscription, Quickbase will support and maintain the Hosted Service ("**Support Services**") in accordance with the Service Level Agreement attached as **Exhibit A** ("**SLA**").

2.7. **Convenience Features.** Quickbase offers the optional features described in this Section 2.7 (collectively, "**Convenience Features**") solely as a convenience to Customer; thus, Convenience Features do not constitute Services. Unless otherwise provided in an applicable Ordering Document (as defined below), Support Services do not include support for any Convenience Features. QUICKBASE MAKES NO REPRESENTATIONS OR WARRANTIES AS TO ANY ASPECT OF ANY CONVENIENCE FEATURE, INCLUDING ANY FUNCTIONALITY RELATED THERETO. CONVENIENCE FEATURES, INCLUDING ALL OF THEIR RESPECTIVE COMPONENTS, ARE OFFERED ON AN "AS-IS," "AS AVAILABLE" BASIS, WITH ALL FAULTS, AND ANY USE THEREOF IS AT CUSTOMER'S SOLE DISCRETION AND RISK. Customer's sole and exclusive remedy under this Agreement for any use of a Convenience Feature is to cease use of the feature.

2.7.1. **App Exchange.** The app exchange feature of the Hosted Service ("**App Exchange**") allows Customer to install template applications, parts of applications, and associated features and functions for use within Customer's own account. While the template applications and features are intended to work with the Hosted Service, Quickbase is not responsible for such template applications nor does Quickbase guarantee or certify that they will function properly for use with the Hosted Service. Customer may, but is not required to, upload its own template applications to the App Exchange for others to use. Each such submission by the Customer to the App Exchange is subject to additional supplemental terms that will be presented online prior to submission. Quickbase may discontinue the App Exchange at any time; discontinuation will not affect template applications previously downloaded by Customer from the App Exchange.

2.7.2. **Integrations.** Quickbase may allow Customer to integrate the Hosted Service with other third-party services ("**Integrations**"). While these Integrations may be designed to work with the Hosted Service, Quickbase is not responsible for the third-party aspects of the Integrations, including any application programming interface ("**API**") provided by such third-party providers. Customer is responsible for establishing (and continuing) the relationship with, and operating and paying the costs associated with, any third-party services. Customer's use of any third-party service in connection with the Hosted Service, and any terms and conditions associated with such use, are solely between Customer and such third-party service provider. Quickbase is not responsible for Customer Data (as defined below) once it leaves the Hosted Service.

2.7.3. **Communities.** Quickbase may provide certain community forums ("**Forums**") that allow Customer to interact with third parties, including other customers. These Forums are provided to Customer as a convenience and their use is entirely optional. Information posted on Forums is accessible and visible to others, so do not share confidential information as such information is not subject to any confidentiality obligations. Customer agrees to adhere to the Acceptable Use Policy in connection with its use of Forums. Quickbase does not review all material posted to and accessible via the Forums nor is Quickbase responsible for any user content or third-party websites made available on or linked thereto, however, Quickbase reserves the right to remove or refuse to post any material submitted to the Forums.

2.7.4. **Beta/Early Access.** Quickbase may invite Customer to try new features or functionality for the Hosted Service which are not generally commercially available, and which will be clearly identified as beta, early access, preview or other similar designation ("**Early Access Features**"). Early Access Features may be subject to additional terms provided to Customer prior to access thereof. Participation in any Early Access Features is at Customer's sole risk and discretion. Quickbase may modify or discontinue any Early Access Features at any time in its sole discretion and may never make them generally or commercially available. Additional fees may apply for continued use of such features once they are generally or commercially available.

3. OPTIONAL PROFESSIONAL SERVICES

3.1. **Personnel.** Quickbase may provide professional services, including Enablement Services and Project Services as defined below (collectively, "**Professional Services**"), through its employees, independent contractors and subcontractors or those of an Affiliate (collectively "**Personnel**"), and will assign Personnel with qualifications suitable for performing the Professional Services. Quickbase may remove, replace or add additional Personnel in its sole discretion, provided that any

replacement or additional Personnel are also suitably qualified. Quickbase will not disclose any Confidential Information (as defined below) of Customer to any unaffiliated subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information and be bound by obligations of confidentiality no less restrictive than those in this Agreement and then only to the extent necessary for such subcontractor to perform the Professional Services subcontracted to it. Quickbase will remain responsible for the obligations performed by any of its subcontractors to the same extent as if such obligations were performed by Quickbase's employees.

3.2. **Hours of Operation.** Professional Services will be performed during standard local business hours except on national holidays, Quickbase corporate holidays, Customer corporate holidays, or other holidays as mutually agreed. Quickbase will make all decisions, in its sole discretion, concerning any accommodations for Quickbase Personnel to take time off for illness, health and welfare, personal obligations, and vacations.

3.3. **Customer Personnel.** Customer will ensure that Customer Personnel with the appropriate authority and skill level are available to Quickbase at the applicable points during the engagement or as reasonably requested by Quickbase. Customer will also designate a Customer resource who will manage Customer Personnel, tasks, risks, issues and action items. Customer is responsible for the quality of all components of the engagement that are created by its internal or external development Personnel, and for ensuring that Customer development activities (including Customer's internal developers and external development Personnel) adhere to a mutually agreed project plan consistent with the implementation and development methodology used by Quickbase.

3.4. **Administrative Access.** Where the Professional Services require Customer to provide Quickbase with administrative level access to any Customer system or application, Customer agrees to use reasonable commercial efforts to provide access in a timely manner. Customer will continually maintain appropriate access levels, including removing access upon final completion of Professional Services.

3.5. **Enablement Services.**

3.5.1. **Scope. "Enablement Services"** means *optional* consulting or training services, if any, which Customer has elected to purchase in connection with its Hosted Service Subscription, as described in an applicable Order. Enablement Services are limited to the applicable tier selected by the Customer in an applicable Order. Further details regarding Enablement Services can be found on Quickbase's website (<https://www.quickbase.com/product-descriptions>).

3.5.2. **Additional Consulting Hours.** Quickbase will not exceed the consulting hours available to the Customer without Customer's prior written approval and consent. If Customer should request that Quickbase perform Enablement Services beyond the available consulting hours, the parties will enter into a separate Order for additional consulting hours, at the then-current Quickbase hourly rates.

3.6. **Project Services.**

3.6.1. **Scope. "Project Services"** means *optional* project services defined under the terms of a statement of work executed by the parties (a "**SOW**") with reference to this Agreement. Quickbase will provide the Project Services, including any work products and other deliverables set forth in a SOW ("**Deliverables**"). Each SOW will set forth the details of the applicable Project Services, including the nature, scope, timetable(s), applicable payments, and any associated Deliverables to be produced. Any and all SOWs will be subject to the terms and conditions of this Agreement.

3.6.2. **Hours Balance.** Quickbase will have the right to stop performance or delivery of any Project Services if Customer's hours balance under a current SOW has been expended. Quickbase will inform the Customer when the hours balance is low, with an offer to purchase additional hours through a Change Order. Quickbase will resume any Project Services only after a Change Order securing additional service hours by the Customer has been executed by the parties.

3.6.3. **Travel and Expenses.** Customer will reimburse Quickbase for pre-approved, reasonable, and necessary expenses (including travel-related expenses) incurred while performing Project Services. Any such fees will be invoiced monthly in arrears and paid according to the SOW.

3.6.4. **Changes in Project Services.** Either party may submit a request for modification of any Project Services and any associated SOW by email or in writing (a "**Change Request**"). The appropriate Personnel will review the Change Request and either approve it for further investigation or reject it if the parties cannot mutually agree. Upon the conclusion of the investigation, Quickbase will prepare an estimate, and then deliver to Customer a proposed amendment to change the Project Services and any associated SOW (a "**Change Order**"). The proposed Change Order prepared by Quickbase will describe the requested change, as well as the estimated additional cost and impact on the schedule, if any. Customer may accept the Change Order by signing and returning the Change Order to Quickbase.

3.6.5. **Assumptions and Customer's Responsibilities.** Quickbase has relied upon the following terms, general assumptions, and Customer responsibilities in agreeing to perform the Project Services and estimating the number of hours required to perform the Project Services. If the terms and assumptions are incorrect, or if the Customer

responsibilities are not performed in a timely manner, the estimated number of hours, fees and expenses may be increased and a change to the scope of work may be required, in addition to any other remedies that may be available to Quickbase under the Agreement. A SOW may include additional assumptions and Customer responsibilities.

3.6.6. **Timely Response.** Customer agrees to use reasonable commercial efforts to respond to Quickbase's requests in a timely manner. Delays in providing timely responses or assistance to Quickbase may result in delays to the SOW estimated timeline.

3.6.7. **Cancellations.** If Customer cancels a scheduled meeting with less than five (5) business days' prior written notice to Quickbase, the allocated hours for that meeting will be credited to Quickbase, and Quickbase will bill all such allocated hours as if the meeting had occurred.

3.6.8. **Customer Documents.** Customer is responsible for creating all documents required by Customer or Quickbase during the performance of the Project Services, unless those documents are listed in the applicable SOW as a Deliverable.

3.6.9. **Testing.** Where the Project Services include testing, Customer is responsible for: (a) developing integration, system, and user test plans, and performing the testing with such assistance from Quickbase as may be defined in the SOW; (b) providing test data that fully and accurately represents production data to support testing efforts defined in the SOW (if test data includes simulation data, Customer recognizes that simulation data may not expose all defects, and adjustments to the scope and schedule of the project may be required when using simulation data); (c) building, updating, and testing all interfaces to and from any solution, unless interfaces are listed as a Deliverable; and (d) in instances where the Customer has opted to forgo development and testing in a development environment, indemnifying, defending, and holding Quickbase harmless from and against any and all claims, losses, liability, costs, and expenses (including reasonable attorneys' fees) for any claims arising from or related to any development and Project Services performed in a production environment.

3.6.10. **Migration Data.** Failure of the Customer to provide any necessary migration data to Quickbase may result in delays and may be subject to additional effort and cost.

3.7. **Intellectual Property Rights Related to Professional Services.**

3.7.1. **Rights in Deliverables.** Except as otherwise specifically set out in this Section 3.7 or an applicable SOW, Quickbase shall retain exclusive ownership of all Intellectual Property produced by Quickbase in performing Professional Services and all modifications, enhancements and upgrades thereto and all intellectual property rights therein. Subject to any third-party rights or restrictions and the other provisions of this Section 3.7, upon payment in full, Quickbase hereby grants to Customer a perpetual, non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use such Intellectual Property solely for use in connection with the Hosted Service.

3.7.2. **Pre-Existing IP or Confidential Information.** Notwithstanding Section 3.7.1 above, each party will retain exclusive ownership and all intellectual property rights it possessed prior to the date that relevant Professional Services were provided in any and all pre-existing intellectual property, Confidential Information, Customer Data, or Customer Applications of such party, including any general knowledge, concepts, know-how, tools methodologies, techniques or other proprietary information or material of any kind, as well as all rights in any improvement or developments made thereto in performance of the Professional Services or incorporated in the Intellectual Property (the "**Pre-Existing IP**").

3.7.3. **License in Pre-Existing IP of Quickbase.** Subject to the other provisions in Section 3.7, Quickbase hereby grants to Customer a royalty-free, non-exclusive, non-transferable, non-sublicensable, worldwide license in perpetuity to use, modify and reproduce any Pre-Existing IP of Quickbase that is embedded in the Hosted Service solely for Customer's internal use of such Intellectual Property in connection with the Hosted Service, for so long as such Pre-Existing IP remains embedded in the Hosted Service and is not separated therefrom.

3.7.4. **License in Pre-Existing IP of Customer.** Where Customer Pre-Existing IP is required by Quickbase to perform Professional Services, Customer hereby grants to Quickbase a royalty-free, non-exclusive, transferable (as provided in Section 22.8), non-sublicensable, worldwide license to use, reproduce, distribute, transmit and make derivatives of the Customer Pre-Existing IP in connection with Quickbase's performance of the Professional Services. Customer represents and warrants to Quickbase that Customer: (a) has sufficient rights in all Customer Pre-Existing IP, to hold the Customer Pre-Existing IP and deliver it to Quickbase; (b) has obtained from all individuals, persons, and third parties any required consents, licenses, and authorizations, and has provided all required notices with respect to the collection, retention, disclosure and use of the Customer Pre-Existing IP that are required under applicable foreign, federal and state laws and regulations, including privacy rules and policies; and (c) will only provide Customer Pre-Existing IP to Quickbase that (x) does not infringe or violate any intellectual property rights, publicity, privacy, confidentiality, contractual or other rights, or any foreign, federal, state or local law or regulation, and (y) is not defamatory, offensive, misleading, false, harmful to minors, or obscene.

3.7.5. **Quickbase Products.** For the avoidance of doubt, nothing in this Agreement will be deemed to provide any ownership, license or other rights to Customer for any of Quickbase's software, databases, add-ons, plugins, utilities, or other products or services that Quickbase makes commercially available, even if those products or services are configured to work with the Deliverables. Limited rights to use such products or services may be separately obtained by Customer subject to Quickbase's then-current standard terms.

3.8. **Support for Professional Services.** Except as specifically set forth in the Enablement Services product description on the Quickbase website, as specifically set forth in an Order, or as set forth in an SOW, all Professional Services are expressly excluded from the SLA and any service credit eligibility set forth in the Agreement, or any other support or maintenance obligations.

3.9. **Non-Solicitation.** Without Quickbase's prior written consent, Customer shall not: (a) during the provision of Professional Services and for a period of one (1) year thereafter, solicit for employment any Personnel, or induce or encourage any Personnel to terminate their employment, agency, or individual contractor relationship with Quickbase or an applicable Affiliate of Quickbase; or (b) within one (1) year of any Personnel's resignation or dismissal, employ or contract with any former Personnel. This Section 3.9, however, shall not prohibit Customer from employing or otherwise engaging any person who has responded to a bona fide recruitment advertisement not specifically targeted to the person employed or otherwise engaged by Customer.

4. **OPTIONAL AI TOOLS**

4.1. **AI Tools.** "AI Tools" means optional artificial intelligence and machine learning tools. Quickbase grants Customer a limited, non-exclusive, non-transferable, revocable, subscription to remotely access and use the AI Tools in connection with Customer Applications. In its sole discretion, Customer may disable AI Tools.

5. **LICENSE TO CUSTOMER DATA.** Customer grants to Quickbase a non-exclusive, royalty-free, fully-paid, worldwide, transferable (as provided in Section 22.8) license to copy, reproduce, transmit, distribute, execute, host, store, display, and use and create derivative works based on the Customer Data and Customer Applications, for the sole purposes of enabling Quickbase to provide the Hosted Service, Support Services, Professional Services, and AI Tools, as applicable. "**Customer Data**" means information, content, data and other materials transmitted, uploaded, or stored by Customer in the Hosted Service, but does not include "**Account Information**" or "**Service Usage Data**." "**Account Information**" means information about Customer or its Users that Customer provides to Quickbase in connection with creation or administration of the Customer account, including names, usernames, phone numbers, email addresses, and billing information associated with the Customer account.

6. **SERVICE USAGE DATA & ANALYSES.** "**Service Usage Data**" means any data, metadata, or content related to how the Customer and its Users use the Hosted Service, which is collected automatically, manually, or passively whenever Customer or a User interacts with the Hosted Service, including other information related to the performance and operation of the Hosted Service, that does not directly or indirectly identify Customer, Users, or any natural person. Quickbase may use the Service Usage Data for any lawful purpose, including for compliance and improving Quickbase's products and services, to create statistical analyses, and for research and development purposes (collectively, "**Service Analyses**"). Quickbase may make Service Analyses publicly available solely for reporting and marketing purposes; provided that such information will be anonymized, de-identified, and/or aggregated so that it: (a) will not identify Customer or its Users; and (b) cannot be used, alone or in conjunction with other information, to identify any specific person. Except as expressly set forth in an Order, Quickbase will have no obligation to provide any Service Usage Data or Service Analyses to Customer or its Users in any form whatsoever.

7. **OWNERSHIP OF INTELLECTUAL PROPERTY.** Unless otherwise stated in this Agreement: (a) Customer owns all right, title and interest in its name, logo, Intellectual Property, its Confidential Information (including Customer Data), and Customer Applications (to the extent distinct from any Service or Deliverables); and (b) Quickbase owns all right, title, and interest in and to its name, logo, the Services, the Convenience Features developed by Quickbase, its Intellectual Property, and its Confidential Information (including Service Usage Data). Each party reserves all of its rights not expressly granted in this Agreement.

8. **CHANGES TO SERVICES.** Quickbase may add, alter, or remove functionality from the Hosted Service at any time without prior notice. Quickbase may also limit, suspend, or discontinue a Service at its discretion. If Quickbase discontinues a Service, it will provide reasonable advance notice to provide Customer with an opportunity to export a copy of Customer Data from the Hosted Service.

9. **FEES, TAXES, USAGE & AUDIT**

9.1. **Fees.** Customer will pay to Quickbase the fees set forth in each Order, Statement of Work, or Change Order (each, an "**Ordering Document**") in accordance with the payment terms set forth in this Agreement and the applicable Ordering Document. Where an Authorized Source Order sets forth any fees that are payable directly to Quickbase by Customer, Customer will pay to Quickbase such fees in accordance with the payment terms set forth in this Agreement. Quickbase reserves the right to change fees for the Service at any time, in its discretion, with notice to Customer, which notice may be

provided to the email address on file with Quickbase or through Customer's Quickbase account; provided, that any increase in fees will take effect on the renewal of the then-current subscription term. Customer will pay all fees to Quickbase on or prior to the due date set forth in the Ordering Document, as applicable. Customer agrees and acknowledges that an Authorized Source Order may set forth additional fees payable to an Authorized Source by Customer, and Customer agrees to pay all such fees in accordance with an agreement between Customer and an Authorized Source. Late payments, if any, are subject to interest at 1.5% per month or, if lower, the maximum rate allowed by applicable law, from the due date until paid. If Quickbase pursues collection efforts against Customer due to Customer's failure to pay any fees due under this Agreement, notwithstanding any limitations of liability suggesting otherwise, Customer will pay Quickbase's reasonable costs of collection, including any attorneys' fees related thereto. Unless otherwise expressly set forth in the Agreement, all fees will be paid in USD and are nonrefundable, and Customer is responsible for fees associated with all Services purchased, regardless of whether used.

9.2. **Taxes.** Customer is responsible for paying all applicable taxes in connection with this Agreement (except for taxes based on Quickbase's income). Fees do not include applicable taxes, and all payments will be made without a deduction for any taxes owed. If Quickbase is required to collect or pay any tax for which Customer is responsible, Quickbase will invoice Customer and Customer will pay such taxes and duties directly to Quickbase. If Customer remits taxes on its own, Customer will provide Quickbase with official receipts issued by the appropriate taxing authority, or such other evidence as Quickbase may reasonably request, to establish that such taxes have been paid. If Customer is tax exempt, Customer will promptly provide evidence of such exempt status to Quickbase.

9.3. **Additional Usage.** Quickbase has the right to monitor Customer's usage of the Hosted Service. If Customer exceeds any of the usage terms, quantities, or entitlements specified in an applicable Ordering Document and purchased during the Subscription Term (as defined below): (a) Customer may purchase additional usage or Services ("**Additional Services**") via a signed Ordering Document; or (b) Quickbase may issue an invoice to Customer for the Additional Services without a separate signed Ordering Document - in either case, the applicable fees for Additional Services will be prorated for the remainder of the then-current Subscription Term. For the avoidance of doubt, if Customer has entered into a multi-year Subscription Term, any Additional Services purchased or billed, and the fees associated therewith, will also be charged for each annual or monthly period remaining for the full Subscription Term. Customer will be responsible for any such Additional Services fees in accordance with the payment terms set forth in this Agreement and any applicable Ordering Document.

10. **CONFIDENTIALITY** Except for disclosures to employees, agents, or representatives who have a need to know such information and who are bound by confidentiality obligations at least as restrictive as those set forth herein, each party agrees not to disclose the other party's Confidential Information without its prior written consent. "**Confidential Information**" includes all non-public information provided by one party to the other, including: (a) all intellectual property; (b) financial information (including pricing) and business information; (c) product roadmaps and (d) Customer Data. Confidential Information does not include (x) information that has become publicly known through no breach by Customer or Quickbase of these confidentiality obligations; (y) information that is independently and lawfully developed or obtained without access or reference to, or use of, Confidential Information, as evidenced in writing. If a receiving party is served with any subpoena or other legal process or a court or governmental request or order requiring or purporting to require the disclosure of any Confidential Information of the disclosing party, the receiving party will, unless prohibited by law, promptly notify disclosing party of such fact and cooperate fully (at disclosing party's expense) with the disclosing party and its legal counsel in opposing, seeking a protective order, seeking to limit, or appealing any such legal process, request, or order to the extent deemed appropriate by the disclosing party. The receiving party will disclose only that portion of the disclosing party's Confidential Information that is legally required to be disclosed. In the event of a breach or threatened breach of this Section, the disclosing party will be entitled, in addition to any other legal or equitable remedies, to seek an injunction or similar equitable relief against any such breach or threatened breach without the necessity of posting any bond. Upon the disclosing party's request, the receiving party will, at disclosing party's election, promptly return or destroy all Confidential Information, including all copies and any derivatives related thereto. Customer Data will be handled in accordance with Quickbase's data protection addendum, as further described in Section 11 (Security and Privacy). For the avoidance of doubt, the obligations to maintain the confidentiality and non-use of Confidential Information will survive the termination or expiration of the Agreement. Customer acknowledges and agrees that Quickbase may retain Account Information after the termination or expiration of the Agreement for the purpose of administering the account, including billing and fulfilling Quickbase's obligations under the Agreement.

11. SECURITY AND PRIVACY.

11.1. **Data Backup.** Quickbase will follow its standard archival procedures for storage of Customer Data and Customer Applications. In the event of any loss or corruption of Customer Data and Customer Applications, Quickbase will use commercially reasonable efforts to restore the lost or corrupted Customer Data and Customer Applications from the latest backups maintained by Quickbase in accordance with its archival procedures.

11.2. **Privacy and Data Protection.** Quickbase processes all personal data for purposes of this Agreement in accordance with the privacy policy (located at <https://www.quickbase.com/privacy>) or the Quickbase data protection addendum (located at <https://www.quickbase.com/data-protection-addendum>) between the parties, as applicable.

11.3. **Data Security.** Quickbase will maintain commercially reasonable data security policies intended to prevent unauthorized access, use, modification, deletion, and disclosure of Customer Data, consistent with <http://www.quickbase.com/security-and-compliance>. Upon request, no more than once per year, Quickbase will provide Customer with confidential reports of third-party examinations or audits (such as SOC 1, SOC 2). Before sharing Customer Data with third-party service providers, Quickbase will ensure that the third party maintains, at a minimum, reasonable data practices for maintaining the confidentiality and security of Customer Data and preventing unauthorized access. Quickbase is not responsible for any person or entity accessing, using, modifying, deleting, or disclosing Customer Data without authorization of Customer when: (a) caused by acts or omissions of Customer (including any User); or (b) Quickbase is in compliance with its security policies, procedures, and controls.

11.4. **Business Associate.** If Customer is a Covered Entity or is a Business Associate to a Covered Entity uploading Protected Health Information to the Hosted Service and Customer is on a qualifying subscription, the Quickbase Business Associate Agreement located at <https://www.quickbase.com/business-associate-agreement> is hereby incorporated into this agreement. For purposes of this section, Covered Entity, Business Associate, and Protected Health Information have the definitions set forth in the Health Insurance Portability and Accountability Act of 1996 and its respective rules and regulations.

12. SUSPENSIONS.

12.1. **Suspensions.** Quickbase does not pre-screen Customer Data or Customer Applications, but Quickbase will have the right (but not the obligation) to remove any Customer Data and/or Customer Application that violate this Agreement if Quickbase reasonably believes that a violation exists and the parties have not been able to resolve such violation. Additionally, Quickbase reserves the right to immediately suspend Customer's access to and use of all or a portion of its account, the Hosted Services, or any particular Customer Data or Customer Application, as determined by Quickbase in its reasonable discretion: (a) if Customer Data or Customer Application contains illegal or infringing material; (b) is likely to cause significant harm to the Hosted Service or a third party; or (c) as may be required in order to avoid a violation of any applicable law or regulation.

12.2. **Excessive Usage.** Quickbase may stop usage entirely, or reduce the rate that Customer may make system calls if there is an unexpected spike in Customer's use of the Hosted Service compared to customers of a similar size (e.g. a large amount of step runs) or if system calls are returning errors.

12.3. **Failure to Pay.** Quickbase may suspend the Hosted Service and/or any other Services if Customer is more than 15 (fifteen) days past due in its payment of fees. Quickbase reserves the right to charge suspended accounts an administrative fee in order to bring Customer's account out of suspension.

13. **TERM.** This Agreement commences as of the Effective Date and will remain in effect until all of Customer's Ordering Documents have expired or been terminated in accordance with the terms of this Agreement (each, the "**Term**"). Each Ordering Document will start on the date specified in the Ordering Document and unless earlier terminated in accordance with this Agreement, will continue for the subscription term or duration set forth therein ("**Subscription Term**"), including any renewals thereof. Unless otherwise set forth in an Ordering Document, each Subscription Term for Enablement, Support, and Hosted Services will automatically renew for successive 1-year periods, or in the case of monthly credit card customers, successive monthly periods, until terminated as set forth herein or until either party provides to the other party notice of its intention to non-renew or downgrade at least 30 (thirty) days prior to the renewal date. Notwithstanding the foregoing, if the Customer has obtained access to the Services through an Authorized Source, Customer may be subject to the term and termination provisions contained in Customer's binding written agreement with an Authorized Source, including any Authorized Source Order.

14. **TERMINATION.** Unless otherwise prohibited by law, either party may terminate this Agreement and/or any applicable Ordering Documents: (a) if the other party is adjudicated bankrupt or otherwise seeks to avoid its performance obligations under applicable bankruptcy or insolvency laws; (b) upon the occurrence of a material breach of this Agreement by the other party if such breach is not cured within 30 (thirty) days after written notice identifying the matter constituting the material breach; or (c) by either party providing notice to the other party of its intention to non-renew or downgrade at least 30 (thirty) days prior to the renewal date. Termination of an individual Ordering Document will not affect any other Ordering Documents then in effect; however, upon an early termination of this Agreement for any reason, all then-current Ordering Documents will terminate, provided however that termination of this Agreement or an Order for Hosted Services will cause the termination of all uncompleted SOWs then being performed pursuant to this Agreement. Unless termination of this Agreement or an applicable Ordering Document resulted from a material, uncured breach of this Agreement or the applicable Ordering Document by Quickbase, Customer will immediately pay to Quickbase, in addition to any other amounts then due and owing to Quickbase, a termination charge equal to all fees that would have been due for Services that would have been provided by Quickbase under the applicable Ordering Documents, had those Ordering Documents not been terminated. In the event of the termination or expiration of this Agreement, all licenses granted under this Agreement will terminate automatically, all Service obligations will cease, and Customer will immediately cease using the Hosted Service and all other Services. Any terms which by their nature extend beyond the termination of this Agreement will remain in effect until fulfilled or expired.

15. REPRESENTATIONS AND WARRANTIES.

15.1 **General.** Each party represents and warrants that: (a) it has full power and authority to enter into and perform this Agreement; (b) this Agreement is valid, binding and enforceable in accordance with its terms; (c) the person entering into this Agreement on behalf of an entity has been duly authorized and empowered to enter into this Agreement; and (d) it will perform its obligations or exercise its rights hereunder in conformance with all Applicable Laws and Specified Laws. “**Applicable Laws**” means all laws and regulations which are generally applicable to the party’s business, without taking into consideration Customer’s specific industry, type of business or data. Customer agrees it is responsible for identifying with specificity and including in each applicable Ordering Document any laws and regulations which are specific to Customer’s industry, business or data (collectively, “**Specified Laws**”) and which Customer would like Quickbase to comply with when providing Services under that Ordering Document.

15.2 **Hosted Service.** Quickbase represents and warrants that: (a) the Hosted Service will be provided substantially in accordance with the terms of this Agreement; and (b) it has taken commercially reasonable efforts to prevent a computer virus, worm, time bomb, logic bomb or other such similar computer program from impacting Customer’s use of the Hosted Service. As Customer’s sole and exclusive remedy, and Quickbase’s sole liability, for any breach of the foregoing warranty, Quickbase will use commercially reasonable efforts to modify or reperform the Hosted Service so that it conforms to the requirements of this Agreement. The warranty above will not apply: (i) if the Hosted Service is not used in accordance with this Agreement; (ii) if the non-conformity is caused by third-party products or services; (iii) to any modification of the Hosted Service not performed by Quickbase; or (iv) to any combination by Customer of the Hosted Service with third-party products or services.

15.3 **Support Services.** Quickbase will provide Support Services for the Hosted Service substantially in accordance with [Exhibit A](#).

15.4 **Professional Services.** Professional Services will be performed competently in accordance with currently accepted standards and practices for services of a similar nature. Customer must provide Quickbase with written, detailed notice of any alleged breach of this warranty within five (5) days after completion of the applicable Professional Services. Quickbase’s entire liability and Customer’s sole remedy for Quickbase’s uncured breach of this warranty will be for Quickbase to, at its option: (i) use commercially reasonable efforts to correct that breach; or (ii) refund the portion of any fees received under an Ordering Document that corresponds to that breach.

15.5 **AI Tools.** Quickbase represents and warrants that it has taken commercially reasonable efforts to prevent a computer virus, worm, time bomb, logic bomb or other such similar computer program from impacting Customer’s use of the AI Tools. As Customer’s sole and exclusive remedy, and Quickbase’s sole liability, upon becoming aware of any breach of the foregoing warranty, Quickbase will use commercially reasonable efforts to modify the AI Tools so that they conform to the requirements of this Agreement. The warranty above will not apply: (i) if the AI Tools are not used in accordance with this Agreement; (ii) if the non-conformity is caused by third-party products or services; (iii) to any modification of the AI Tools not performed by Quickbase; or (iv) to any combination by Customer of the AI Tools with third-party products or services.

15.6 **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 15, QUICKBASE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO CUSTOMER, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER OR SERVICE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, WORKMANLIKE QUALITY, SYSTEM INTEGRATION, SATISFACTORY QUALITY, TITLE, NON-INFRINGEMENT AND SUITABILITY, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE OR OTHERWISE, OR THAT ANY SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL SERVICES ARE PROVIDED ON AN “AS IS” AND “WITH ALL FAULTS” BASIS ONLY AND QUICKBASE DOES NOT REPRESENT OR WARRANT THAT ANY SERVICE WILL MEET CUSTOMER’S BUSINESS REQUIREMENTS OR THAT IT WILL BE TIMELY, SECURE OR ACCURATE. NO ADVICE OR INFORMATION OBTAINED BY CUSTOMER FROM QUICKBASE WILL CREATE ANY REPRESENTATION OR WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, QUICKBASE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND TO CUSTOMER WITH RESPECT TO ANY FAILURE OF QUICKBASE TO MEET ANY EXPRESS WARRANTIES DUE TO ACTS WITHIN THE CONTROL OF CUSTOMER. QUICKBASE DOES NOT WARRANT RESULTS THAT MAY BE OBTAINED OR ACHIEVED AS A RESULT OF ANY PROFESSIONAL SERVICE OR ASSOCIATED SERVICE PACKAGES, OR THAT PROFESSIONAL SERVICES OR DELIVERABLES WILL WORK IN COMBINATION WITH OTHER SOFTWARE OR EQUIPMENT NOT SPECIFIED IN THE APPLICABLE ORDERING DOCUMENT, OR THAT OPERATION OF ANY DELIVERABLE CONSISTING OF SOFTWARE WILL BE FREE OF NON-MATERIAL ERRORS, BUGS OR MINOR INTERRUPTION, OR THAT ALL SUCH ERRORS WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES THAT QUICKBASE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE HOSTED SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. QUICKBASE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

16. INDEMNIFICATION.

16.1 Quickbase Indemnification. Quickbase will defend and indemnify Customer, its employees, officers, agents, directors, subsidiaries, successors and assigns against any loss or damage (including reasonable attorneys' fees) incurred in connection with any third-party claims, suits, or proceedings ("**Claims**") to the extent arising from an allegation that a Service infringes any copyright, patent, trade secret right, or trademark of a third party arising under United States law. In the event that the Service or any part thereof is likely to, in Quickbase's sole opinion, or does become the subject of an infringement-related Claim, Quickbase will have the right to: (a) procure for Customer the right to continue using the Service; (b) modify the Service to make it noninfringing; or (c) terminate this Agreement and provide Customer with a pro-rata refund of any pre-paid fees. Quickbase will have no liability for any Claim or demand arising from: (i) the use or combination of the Service or any part thereof with software, hardware, or other materials not developed by Quickbase if the Service or use thereof would not infringe without such combination; (ii) where changes were made, or actions taken, by Quickbase upon instructions from Customer and liability would not have arisen but for such instructions; (iii) a breach by Customer of any obligation under this Agreement or a use of the Service by Customer or any User in a manner outside the scope of any right granted herein if the Claim would not have arisen but for such breach or unauthorized use; (iv) modification of the Service by or on behalf of Customer; or (v) where Customer continues allegedly infringing activity after being notified thereof in writing or after being informed of or provided with modifications that would have avoided the alleged infringement. **The foregoing states Quickbase's entire liability and Customer's sole and exclusive remedy for intellectual property rights infringement.**

16.2 Customer Indemnification. Customer will defend, indemnify and hold Quickbase, its employees, officers, agents, directors, subsidiaries, successors and assigns harmless from and against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims arising out of or related to (i) Customer Data, (ii) Customer Applications, (iii) any Integrations by Customer in accordance with Section 2.7.2 (Integrations), (iv) an actual or alleged breach or violation by Customer of Section 2 (Hosted Service), Section 9.1 (Fees), Section 9.2 (Taxes), Section 10 (Confidentiality); or (v) Customer's failure to comply with all applicable laws and regulations, including privacy regulations.

16.3 Process. The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, (b) reasonably cooperating and assisting in such defense at the indemnifying party's expense; and (c) at indemnifying party's option, giving sole control of the defense and any related settlement negotiations to the indemnifying party. The indemnifying party will not, without the prior written consent of the indemnified party, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Claim unless the settlement, compromise or consent provides for and includes an express, unconditional release of such Claim against the indemnified party.

17. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW: (I) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA, LOST PROFITS OR INCOME, LOSS OF BUSINESS, OR LOSS OF GOODWILL, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF QUICKBASE OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS AND REGARDLESS OF HOW CAUSED OR FORESEEABLE; AND (II) EITHER PARTY'S ENTIRE LIABILITY HEREUNDER FROM ANY CAUSE WHATSOEVER WILL BE LIMITED TO DIRECT, PROVEN DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNTS PAID OR PAYABLE TO QUICKBASE BY CUSTOMER DURING THE PRIOR 12 (TWELVE) MONTH PERIOD TO WHICH THE APPLICABLE CAUSE OF ACTION AROSE. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR WILLFUL MISCONDUCT.

18. INSURANCE. Quickbase will maintain at least the following insurance during the Term: (a) general liability insurance of \$1 million per occurrence and \$2 million in aggregate; (b) automobile insurance of \$1 million per occurrence; (c) umbrella insurance covering (a)-(b) of an additional \$3 million; (d) worker's compensation insurance in accordance with statutory requirements; and (e) technology errors and omissions and cyber insurance of \$3 million. All such coverage will be issued by insurers properly authorized to do business in the jurisdictions in which the Service is performed. Upon request, Quickbase will provide Customer with a certificate of insurance evidencing the applicable coverages set forth herein.

19. FEEDBACK. At its option, Customer may provide feedback, suggestions and/or recommendations about the Service to Quickbase ("**Feedback**"). If Customer provides Feedback, then Quickbase may use such Feedback for itself and other customers, without restriction and without obligation to Customer.

20. PUBLICITY. Quickbase may publicly refer to Customer as a customer of Quickbase, including on Quickbase's website and in sales presentations, and may use Customer's name and logo for such purposes, unless Customer opts out of such naming rights by notifying Quickbase via email to publicity@quickbase.com and including "Opt Out" in the subject line of the email.

21. NOTICES. All notices under this Agreement will be in writing; delivered by hand, e-mail, certified mail (return receipt requested, postage prepaid) or a nationally recognized next-day courier service (all delivery charges prepaid) to the addresses indicated either below or on the applicable Ordering Document. All notices will be effective upon: (a) receipt by the party to which notice is given; (b) the first day following sending by electronic mail; or (c) on the third (3rd) day following mailing, whichever occurs first. Each party may change its address for receipt of notice by giving notice of such change to the other

party. Notwithstanding the foregoing, Customer acknowledges and agrees that Quickbase may send service notices to Customer via email or by posting them on one of Quickbase's webpages, such as service.quickbase.com.

Notice to Quickbase:

By mail: Quickbase, Inc.
Attn: General Counsel
255 State Street
Boston, MA 02109
By e-mail: generalcounsel@quickbase.com

Notice to Customer:

By mail or email: To the contact identified in Customer's most recent Ordering Document.

22. GENERAL.

22.1 **Independent Contractors.** Quickbase's relationship to Customer is that of an independent contractor, and neither party is an agent or partner of the other and will not represent to any third party that it has any authority to act on behalf of the other.

22.2 **Remote Work.** Unless otherwise agreed in writing in an applicable Ordering Document, all Services will be provided by Quickbase Personnel remotely from Quickbase offices or other locations, and travel only as mutually agreed in writing. Where Services are performed by Quickbase at Customer's location (or a location managed by Customer), Customer will: (a) complete any facility preparations required for the Services at least two (2) weeks prior to the start of the Services, including preparation of the network infrastructure (equipment, bandwidth, and setup), and procurement and installation of required third-party hardware and/or software; and (b) provide Personnel with appropriate office accommodations, including workspace with broadband Internet access and local telephone extensions for all Personnel, a dedicated Quickbase team room, and equipment/workstations suitably configured to enable Quickbase to provide the Services.

22.3 **Infrastructure.** Except as expressly set forth in an applicable Ordering Document, Customer will provide and is responsible for all Internet connectivity, internal infrastructure, graphics collateral, and hardware and software necessary to use any Services, including any Deliverables, such as any application deployment within the Customer environment.

22.4 **Language.** Unless otherwise agreed in writing in an applicable Ordering Document, all Services, including all correspondence and documents, and all Deliverables, will be provided in English, and all meetings will be conducted in English.

22.5 **Governing Law; Jurisdiction.** This Agreement will be governed and interpreted by and under the laws of the Commonwealth of Massachusetts applicable to contracts entered into and wholly performed therein and the parties expressly disclaim the applicability of the United Nations Convention on Contracts for the International Sale of Goods, the Convention on the Use of Electronic Communications in International Contracts, and the Uniform Computer Information Transactions Act. Any disputes arising out of or related to this Agreement or performance hereof, shall be exclusively brought in the federal or state courts in the Commonwealth of Massachusetts and the parties waive any objections related thereto.

22.6 **Jury Trial.** The parties irrevocably waive any right to a trial by jury.

22.7 **Statute of Limitations.** Notwithstanding any law providing a longer statute of limitations, any Customer claim or cause of action arising out of or related to this Agreement and/or Customer's use of the Service must be filed within one (1) year after such claim or cause of action arose, without regard to the date such claim or cause of action was discovered, or such claim or cause of action will be forever barred.

22.8 **Assignment.** Neither party may assign performance of this Agreement or any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other, except that Quickbase may assign this Agreement without Customer's prior written consent in the case of a merger, acquisition or other change of control, and in such event this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any attempted assignment or transfer in violation of the foregoing will be null and void.

22.9 **Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, strike, widespread disease, epidemic, pandemic, quarantines, shortage of materials, fire, earthquake, flood, terrorism, failure of utility or telecommunications providers, denial of service attack, failure of suppliers, or any other event beyond the control of

such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

22.10 **No Third-Party Beneficiaries.** This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

22.11 **Federal Government End Use Provisions.** If Customer is the U.S. government or any entity acting on its behalf, each Service is licensed as a Commercial Item, as that term is defined at 48 C.F.R. §2.101, and licensed only with those rights as are granted to all other entities or individuals entering into an agreement to use the Service. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Quickbase to determine if there are acceptable terms for transferring such rights, and in such case, enter into a separate addendum signed by both parties specifically conveying such other rights.

22.12 **Export; Anti-Corruption.** Each party will comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Service. Without limiting the foregoing, each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports. Both parties agree to fully comply with the provisions of the United States Foreign Corrupt Practices Act ("**FCPA**") and/or the Organization for Economic Cooperation and Development ("**OECD**") prohibiting foreign bribery and improper payments.

22.13 **Waiver; Remedies.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by an authorized representative of each party. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

22.14 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. A manually or electronically signed copy of this Agreement or any Ordering Document delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of the Agreement or Ordering Document.

22.15 **Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.


22.16 **Future Functionality.** Customer acknowledges and agrees that its agreement hereunder is not contingent upon the delivery of any future functionality.

22.17 **Miscellaneous; Entire Agreement.** Any use of the term "include" or "includes" or "including" will mean "include without limitation," "includes without limitation" and "including without limitation," respectively. This Agreement constitutes the entire agreement between the parties as to its subject matter, and supersedes all prior agreements, proposals or representations concerning the subject matter of this Agreement. No terms or conditions stated in a Customer purchase order or in any other Customer order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void, and are hereby rejected. No amendment of any provision of this Agreement (or any Ordering Document) will be effective unless in writing and signed by the parties. In the event of a conflict or inconsistency between the terms of this Agreement and any agreement between Customer and an Authorized Source, the terms of this Agreement will control.

IN WITNESS WHEREOF, this Agreement has been duly executed by the undersigned as of the Effective Date.

Quickbase, Inc.

DocuSigned by:



By: _____

6779F837FAD349E...
Shawna Deane

Name: _____

Title: Associate General Counsel

Date: 6/25/2024

Customer: West Virginia Office of Technology

By: Heather Abbott

Name: Heather Abbott

Title: Chief Information Officer

Date: 06/26/2024

Exhibit A**SERVICE LEVEL AGREEMENT**

This Service Level Agreement ("SLA") sets forth the terms and conditions of the agreement between Quickbase and Customer regarding the Support Services and the availability of the Hosted Service. Capitalized terms not otherwise defined in the Agreement will have the meaning given to them in this SLA. Unless otherwise indicated, all section cross-references are to sections in this SLA. In the event of a conflict between the terms of this SLA or the Agreement, the terms of this SLA will control.

1. DEFINITIONS

The following definitions apply to this SLA:

Availability: the percentage computed by dividing the actual number of minutes that the Hosted Service is available to users in a given Calendar Quarter (as defined below) by the total number of minutes in that Calendar Quarter. Quickbase will not be considered available during any "Outage" (as defined below) except for a "Permitted Outage" (as defined below).

Calendar Quarter: the following intervals, January 1 – March 31; April 1 – June 30; July 1—September 30; October 1—December 31.

Emergency Outage Incident: maintenance required as a result of conditions beyond Quickbase's reasonable control. Such emergency maintenance may occur at any time, as Quickbase deems necessary, and will be announced on the Quickbase Service Page.

Outage: the period (measured in minutes) during which the Hosted Service is not available to process Quickbase requests.

Planned Outage: an outage incident announced on the Quickbase Service Page prior to the incident date/time.

Permitted Outage: any Outage which is caused by one or more of the following:

- (a) Activities which Customer directs, denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, acts of civil disobedience, acts of war, acts against parties (including third party carriers or other vendors), or a force majeure event, as described in the Agreement;
- (b) Periods of Planned Outages or Emergency Outage Incidents;
- (c) Customer-provided content or programming errors, including content installation and integration;
- (d) Customer's performance of any activity on customer's network or computing resources;
- (e) Work performed at Customer's request (for example, additional technical assistance);
- (f) Lack of availability or untimely response time from Customer to respond to incidents that require its participation for source identification and/or resolution, including meeting Customer responsibilities for any prerequisite services;
- (g) Customer's breach of its material obligations under the Agreement;
- (h) Customer's performance of any technical security integrity review, penetration test, or vulnerability scan; and/or
- (i) An event to which Quickbase reasonably believes to the best of its knowledge and experience that there is no alternative but to cause an Outage in order to resolve an issue, if time is of the essence and the appropriate Customer individuals are not contactable. In such instances, Quickbase may cause the Outage. Any such Outage will be for as short a time as possible and will be kept as localized as possible. Quickbase will inform Customer as soon as is reasonably practicable of such Outage.

1.7 **Quickbase Service Page:** <https://service.quickbase.com>.

1.8 **Service Credit:** the following credit based on Availability in a given Calendar Quarter period described below; provided that, if Customer pays an annual fee for the Hosted Service, the monthly hosted Service fee below shall be calculated by dividing the annual fee by 12:

Hosted Service Availability	Service Credit
≥ 99.9%	no Customer credit
< 99.9% and ≥ 99.6%	Customer credit of 1.0% of monthly Hosted Service fee
< 99.6% and ≥ 99.4%	Customer credit of 2.0% of monthly Hosted Service fee
< 99.4% and ≥ 99.2%	Customer credit of 3.0% of monthly Hosted Service fee

< 99.2% and ≥ 99.0%	Customer credit of 4.0% of monthly Hosted Service fee
< 99.0%	Customer credit of 10.0% of monthly Hosted Service fee

2. SERVICE LEVEL AVAILABILITY

Quickbase will use reasonable commercial efforts to ensure that the Hosted Service will be available 99.9% (ninety-nine and nine-tenths percent) of the time, seven (7) days a week, 24 (twenty-four) hours per day, excluding Permitted Outages. For purposes of this SLA, Availability will be calculated at the end of each Calendar Quarter.

3. CUSTOMER SUPPORT

Every annual account will receive base support. This includes access to technical support, Quickbase University, and Quickbase's online builder community. In addition to the basic support, Quickbase offers several optional advanced support packages that Customer may purchase that feature a mix of training and onboarding support, technical consulting, best practices around governance, ongoing CSM engagement for success planning and business impact analysis, and access to our best-in-class Customer technical support.

4. REPORTS

Quickbase will measure and report its average Availability percentage on the Quickbase Service Page. Customer will have the option to sign up for email notifications on the Quickbase Service Page.

5. SERVICE CREDIT PROCESS

If at the end of any Calendar Quarter Availability is less than 99.9%, Customer is eligible to receive a service credit, as detailed in Section 1 above, subject to the following:

5.1 **Eligibility.** Customer will not be eligible for a service credit until the end of the first full Calendar Quarter (a minimum of 90 (ninety) days) has elapsed following execution of this Agreement. In addition, if a single Outage causes an Availability percentage of less than 99.9%, Customer is only eligible for one (1) service credit.

5.2 **Settlement of Credits.** Customer must request credit from Quickbase for any Calendar Quarter in which Availability fell below 99.9% by submitting a support case titled "[Name of company] requesting Quickbase Credit – SLA.", within 15 (fifteen) days of the end of such Calendar Quarter. Failure to so notify Quickbase will result in loss of Customer's eligibility for the subject service credit. Quickbase will issue service credits in a subsequent invoice following Customer's notification to Quickbase and Quickbase's determination of Customer's eligibility for such service credit. If a recurring charge for a specific Calendar Quarter period has not been incurred, or for any other reason has been credited or waived, Customer will not be eligible for a service credit for that time period. Should a service credit be earned in the final Calendar Quarter period of Hosted Service provided under the Agreement, Quickbase will apply any credit due against outstanding amounts due and payable to Quickbase under the Agreement, if any, and if no amounts are due and payable to Quickbase, Quickbase will refund the credit amount to Customer.

6. TERMINATION RIGHT

Should System Availability fall below 99.5% for three consecutive Calendar Quarters or below 80% for any Calendar Quarter, Customer may terminate the Agreement for cause in accordance with the termination provision in the Agreement. Customer must notify Quickbase of its intent to terminate within 30 (thirty) days of the end of the applicable Calendar Quarter giving rise to the termination right. Should Customer invoke this termination right, Customer will be entitled to a pro-rata refund of any pre-paid fees; should Customer request such a termination, Customer forfeits the right to claim any service credit to which Customer may otherwise be entitled.