

**Professional Services Agreement**  
**("ISA Provisions")**

This ("Professional Services Agreement" or "ISA Provisions") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between Spacesaver Systems, Inc., d/b/a Infolinx System Solutions, a Maryland corporation with its corporate office located at 10800 Connecticut Avenue, Kensington, MD 20895-2102 on behalf of itself and its subsidiaries providing services hereunder ("collectively Infolinx") and the Lexington-Fayette Urban County Government, an urban county government pursuant to Chapter 67A of the Kentucky Revised Statutes, located at 200 East Main Street, Lexington, KY 40507 ("LFUCG" or "Subscriber"). Infolinx or Subscriber may be referred to separately as a "Party" or jointly as "Parties" to the ISA.

In addition to the provisions set forth in RFP #9-2016 Records Inventory Management System ("RFP"), which is attached hereto as Exhibit A and incorporated herein by reference, the terms and conditions set forth in the accompanying Infolinx Service Level Agreement ("SLA"), which is attached hereto and incorporated herein by reference as Exhibit B, and the terms and conditions set forth in the accompanying Infolinx Subscription Agreement ("ISA"), which is attached hereto and incorporated herein by reference as Exhibit C, shall also apply whenever Infolinx furnishes assistance, or otherwise provides products or services to Subscriber. All terms defined in the ISA shall have the same meaning in the SLA unless expressly modified herein or by a separate Subscription Agreement.

**1. MULTIPLE DOCUMENTS.**

**1.1. ISA Documents.** Subscriber understands that this ISA consists of multiple documents including: (i) the RFP; (ii) ISA Subscription Agreement Specifications; (iii) these ISA Subscription Agreement Provisions and (iv) the Infolinx Service Level Agreement, including all other agreements and policies incorporated therein by reference, under which Microsoft Corporation ("Microsoft") provides Infolinx the technology supporting the Infolinx Cloud Services (all such documents jointly referred to as the "ISA Documents").

**2. INFOLINX CLOUD SERVICES.**

**2.1. Scope of Services.** As used in this ISA, "Infolinx Cloud Services" means Infolinx's cloud-based records management software application available via the web at [lfucg.cloudapp.net](http://lfucg.cloudapp.net)

**2.2. Rights.** As used in this ISA, "**IP Rights**" means all rights owned, licensed or otherwise held in patents, trademarks, service marks, copyrights, mask works, trade secrets, trade dress, moral rights, publicity rights or other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, and any applications or registrations thereof or therefore.

**2.3. Azure Agreement.** Subscriber acknowledges that Infolinx is providing its Infolinx Cloud Services via web-based services offered by Microsoft under the Azure Agreement (<https://azure.microsoft.com/en-us/support/legal/subscription-agreement/>), and that Subscriber's use of the Infolinx Cloud Services shall also be subject to all limitations set forth in the Azure Agreement, including all limitations on access, availability, security, warranties, defense of claims, disclaimers, liability, U.S. export jurisdiction and international availability, and all other limitations set forth in the Acceptable Use Policy, Services Terms, and SLAs incorporated into the Azure Agreement by reference. All such limitations shall apply to Subscriber under this ISA. To the extent that Subscriber's conduct, use or misuse of the Infolinx Cloud Services enables Microsoft to enforce rights against Infolinx under the Azure Agreement, Infolinx shall have the same rights against Subscriber under this ISA.

**2.4. No Third Party Beneficiary Rights.** Nothing in this ISA shall entitle Subscriber to enforce any rights that Infolinx may have under the Azure Agreement. Subscriber acknowledges that Subscriber is not intended to be and has no rights as a third party beneficiary under this ISA, the Azure Agreement, or any other ISA Documents.

### **3. SUBSCRIPTION PLAN.**

**3.1. Grant.** Subject to this ISA, Infolinx hereby grants Subscriber the right to access and use the Infolinx Cloud Services in accordance with the subscription plan specifications detailed in the Infolinx Cloud Services Subscription Agreement.

**3.2. Subscriber Account.** Subject to this ISA, Infolinx shall create an account enabling Subscriber's access to the Infolinx Cloud Services ("Subscriber Account"). Subscriber shall be responsible for all activity under the Subscriber Account.

**3.3. Access Credentials.** Subscriber shall maintain the confidentiality of all Subscriber Account and Authorized User credentials necessary to access and use the Infolinx Cloud Services.

**3.4. Authorized User Conduct.** Subscriber shall be responsible for each Authorized User's use of the Infolinx Cloud Services. Misuse, abuse, improper disclosure of Infolinx Cloud Services access credentials, or other conduct of any Authorized User that is inconsistent with or in material breach of this ISA, including the Azure Agreement or any other ISA Documents, shall be attributable to Subscriber and be grounds for immediate suspension of all access to the Infolinx Cloud Services via the Subscriber Account and termination of this ISA. Subscriber must promptly notify Infolinx of any misuse, abuse, improper disclosure of Subscriber's access credentials, security issues related to the Infolinx Cloud Services, or other conduct of any Authorized User that is inconsistent with or in material breach of this ISA, including the Azure Agreement or any other ISA Documents.

**3.5. Infolinx Service Level Agreement.** Subject to this ISA, the Infolinx Cloud Services will operate consistent with Infolinx's service level agreement ("SLA") and the RFP.

### **4. SUBSCRIBER CONTENT.**

**4.1. Content.** "Subscriber Content" means all content including all data, text, images, video, audio and/or other electronic files that an Authorized User uploads to the Infolinx Cloud Services via the Subscriber Account.

**4.2. Ownership of Subscriber Content.** As between Subscriber and Infolinx, Subscriber shall exclusively own or control all Subscriber Content and shall retain all IP Rights in and to the Subscriber Content. Subject to this ISA, and provided that Subscriber is not in material breach of this ISA or any other ISA Documents, Infolinx shall provide Subscriber with a copy of all Subscriber Content no later than thirty (30) days after the termination of this ISA, subject to the limitations in this ISA, including the Azure Agreement.

**4.3. Privacy, Data Processing and Location.** Subscriber Content shall be subject to the Privacy Statement incorporated in the Azure Agreement and the Confidentiality provisions of this ISA. Subscriber warrants that all Subscriber Content has been collected, processed and created or provided to Subscriber in accordance with applicable laws on the protection of data subjects with regard to the processing of personal data and on the free movement of such data, including in particular any applicable legislation implementing the EU Data Protection Directive 95/46/EC and the Privacy and Electronic Communications Directive 2002/58/ED (as amended by Directive 2009/136/EC) or subsequent General Data Protection Regulation or similar directive or regulation that takes the place of the Directive in the applicable EU member state ("Data Protection Laws"), and also including laws or regulations that will apply to Subscriber Content that is transferred to, stored or processed by, any affiliates, employees,

contractors and business partners located anywhere in the world. The terms “personal data” and “process” shall have the meanings given to them in the applicable Data Protection Laws. For purposes of this ISA, as between Infolinx and Subscriber, Subscriber is the data controller and Infolinx is the data processor.

**4.4. Responsibility for Subscriber Content.** Subject to the indemnification provisions set forth in the RFP, Infolinx shall not be responsible or otherwise liable for Subscriber’s or any Authorized User’s activities in connection with the Infolinx Cloud Services, including any responsibility or liability arising from Subscriber Content that Subscriber or any Authorized User stores or otherwise uses in connection with the Infolinx Cloud Services. Infolinx reserves the right, at any time and without notice to Subscriber, to review, monitor, flag, filter, modify, refuse or remove any or all Subscriber Content from the Infolinx Cloud Services if Infolinx determines in good faith, in its sole discretion, that the Subscriber Content violates any provisions of this ISA or any other ISA Documents, but Infolinx shall have no obligation to do so. Subscriber shall immediately remove or modify any Subscriber Content that violates any Data Protection Laws or other applicable laws, rules, or regulations. If Subscriber does not do so, Infolinx may promptly suspend access to Subscriber’s Account including all Subscriber Content and may also terminate this ISA for material breach.

**4.5. Subscriber’s Grant.** Subscriber hereby grants to Infolinx, Microsoft, and Infolinx’s other service providers engaged to render services in connection with the Infolinx Cloud Services, a royalty-free, non-exclusive license during the Term of this ISA to store, maintain, process, and display the Subscriber Content to Subscriber’s Authorized Users solely via the Infolinx Cloud Services.

## **5. OWNERSHIP OF INFOLINX CLOUD SERVICES AND RELATED PROPERTIES.**

**5.1. Infolinx Ownership.** Except for the Subscriber Content, as between Subscriber and Infolinx, Infolinx shall exclusively own or control, and retain all right, title and interest in and to all aspects of the Infolinx Cloud Services, including the Infolinx software and all other Infolinx Cloud Services content, data and information, the “Infolinx” mark and all other Infolinx trademarks and service marks, all inventions, discoveries, methods, and know-how developed, provided or acquired by Infolinx during the Term of this ISA, and all technology associated with the Infolinx Cloud Services (and customizations thereof) including the unique “look and feel” of the same, all Infolinx Confidential Information, and all IP Rights associated with each (collectively, the “*Infolinx Properties*”). Without limiting any of Infolinx’s rights under this Section, Infolinx shall be free to use and reuse the Infolinx Properties (or any portion thereof), and may exercise all IP Rights pertaining thereto, in its sole discretion and without restriction, provided that such use does not cause unauthorized disclosure of Subscriber Content or Subscriber’s Confidential Information.

**5.2. Restrictions; Reservation of Rights.** Subscriber shall not have any right to reproduce or otherwise exploit the Infolinx Cloud Services or any Infolinx Properties, through any outsourcing, timesharing, service bureau or other arrangement. Subscriber shall not disassemble, decompile, reverse engineer or make any attempt by any means to obtain the source code or any other code for the Infolinx Cloud Services or any other Infolinx Properties.

**5.3. Compliance with Laws; Interoperability Issues.** Each Party shall comply with all laws applicable to the performance of such Party’s obligations under this ISA. Should any law or regulation suggest that Subscriber has a right to disassemble, decompile, reverse engineer or to obtain or access the source code or any other code for the Infolinx Cloud Services or any other Infolinx Properties for interoperability or any other purposes, then Subscriber hereby waives any such rights or otherwise contractually agrees not to exercise any such rights. To the extent that any such applicable laws may not be waived, then Subscriber shall give Infolinx thirty (30) days written notice describing in reasonable detail the interoperability or other issues giving rise to Subscriber’s rights under such law prior to taking any such action and, upon receipt of Subscriber’s written notice, Infolinx shall have the right to either make the necessary changes to the Infolinx Cloud Services to address the issues or to promptly terminate

this ISA by delivering written notice of termination to Subscriber. If Infolinx decides to address the issues raised in Subscriber's written notice, Infolinx may treat Subscriber's written notice as a request for customization of the Infolinx Cloud Services under Section 11.5 of this ISA. Alternatively, if Infolinx terminates this ISA under this provision, then Infolinx shall refund to Subscriber any Fees attributable to the remaining balance of the Term.

**5.4. Use of Cookies.** Infolinx may place "cookies" on Subscriber's computers and the computers of each Authorized User who accesses the Infolinx Cloud Services using a personal computer. Cookies are used to track use of the Infolinx Cloud Services and perform user analysis to help Infolinx assess the effectiveness and usefulness of various Infolinx Cloud Services features and functions. Subscriber may make further inquiries about Infolinx's cookies via email to info@infolinx.com. Subscriber consents to Infolinx's use of cookies, and represents and warrants that it has given notice to its Authorized Users and obtained their informed consent to Infolinx's use of cookies in accordance with applicable Data Protection Laws.

## **6. PAYMENT TERMS AND TAXES.**

**6.1. Fees.** Other than the One-Time Investment, the Monthly fee specified by Infolinx in its RFP response (Exhibit A) and any additional work agreed to by both parties as described in section 11.5 "Customization", all Fees paid to Infolinx shall be based on actual work performed for Subscriber. Infolinx shall submit detailed periodic reports indicating work performed for LFUCG prior to payment. Unless otherwise agreed by the Parties in writing, all payments to Infolinx shall be made in U.S. Dollars in immediately available funds. The monthly service fee may increase once every 12 months, but in no event, by more than 4%.

**6.2. Collection.** Any Fees not paid when due shall accrue interest at the rate of 1.5% per month or the maximum rate permitted by applicable law, whichever is less. In the event that any unpaid Fees are referred to collection, Subscriber shall pay all costs and expenses of collection, including reasonable attorneys' fees. If Infolinx owes Subscriber any money for any reason, Infolinx may deduct from its obligation to Subscriber any Fees or other amounts owed by Subscriber to Infolinx.

**6.3. Taxes.** "Tax" or "Taxes" shall mean any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated, imposed, or sought to be imposed, on or with respect to Subscriber's purchases from Infolinx under this Agreement which Infolinx is required or permitted by law or a tariff to collect from Subscriber; *provided, however*, that the term "Tax" will not include any tax on Infolinx's corporate existence, status, income, corporate property or payroll taxes. All Taxes shall be added to the Fee and be paid by Subscriber. If Subscriber claims an exemption for any Taxes, Subscriber must provide Infolinx with a proper tax exemption certificate as authorized by the appropriate taxing authority. Subscriber must pay the applicable Taxes to Infolinx until it provides Infolinx with a valid tax exemption certificate. If applicable law exempts a service under this Agreement from a Tax, but does not also provide an exemption procedure, then Infolinx will not collect such Tax if Subscriber provides Infolinx with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold Infolinx harmless from any tax, interest, penalties, loss, cost or expense asserted against Infolinx as a result of its not collecting the Taxes from Subscriber.

## **7. CONFIDENTIALITY.**

**7.1. Confidential Information.** Subject to Section 7.2, as used herein, "**Confidential Information**" means any non-public information of a Party that it reasonably considers to be of a confidential, proprietary or trade secret nature, including marketing, engineering and other plans, software, financial statements and projections, customer and supplier information, research, designs, plans, compilations, methods, techniques, processes, procedures and know-how, whether in tangible or

intangible form, and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically or in writing. In the course of performing under this ISA each Party may be given access to, or come into possession of, Confidential Information of the other Party. The Party receiving the Confidential Information (the “**Receiving Party**”): (a) shall hold the Confidential Information of the other Party (the “**Disclosing Party**”) in confidence; (b) shall use such Confidential Information only for the purpose of fulfilling its obligations and exercising its rights under this ISA (the “**Permitted Use**”); (c) shall reproduce such Confidential Information only to the extent necessary for the Permitted Use; (d) shall restrict disclosure of such Confidential Information to its representatives who (i) require the Confidential Information for the Permitted Use, (ii) are informed by the Receiving Party of the confidential nature of the Confidential Information and the obligations relating to confidentiality set forth in this ISA and (iii) agree to the obligations relating to confidentiality set forth in this ISA; and (e) shall not disclose the Confidential Information to any third-party without the Disclosing Party’s prior written approval.

**7.2. Limitations.** The term “Confidential Information” shall not apply to any information: (a) that at the time of disclosure was previously known to the Receiving Party free of restriction and evidenced by documentation in the Receiving Party’s possession; (b) that has become generally available to the public without breach of this ISA or other wrongful act by the Receiving Party; (c) that has been rightly received from a third-party who is not under any obligation of confidentiality with regard to such information; or (d) for the purpose of permitting a disclosure, and to the extent disclosed, pursuant to law, judicial order or governmental regulation, so long as the Receiving Party promptly notifies the Disclosing Party prior to such disclosure and provides the Disclosing Party with an opportunity, to the extent practicable, to seek an appropriate protective order.

**7.3. Return of Confidential Information.** Each Party’s Confidential Information shall be returned upon written request by the Disclosing Party or upon the Receiving Party’s determination that it no longer has a need for such Confidential Information in connection with the Permitted Use.

**7.4. Survival.** The provisions of this Confidentiality Section shall survive for five (5) years after the expiration or termination of this ISA; provided, however, that with respect to any trade secret, the confidentiality obligations contained herein shall continue for so long as such information remains a trade secret, but in no event less than seven years after the expiration or termination of this ISA.

**7.5. Injunctive Relief.** The Receiving Party agrees that any unauthorized disclosure of the Confidential Information or other violation, or threatened violation, of this Confidentiality Section will cause irreparable damage to the Disclosing Party, and that, therefore, in addition to any other remedies at law or at equity to which the Disclosing Party may be entitled, the Disclosing Party shall be entitled to an immediate injunction prohibiting the Receiving Party from improperly using for its benefit or from any disclosure, attempted disclosure, violation or threatened violation of this Confidentiality Section, and hereby waives its right to require the Disclosing Party to post any bond or other security in connection with the Disclosing Party’s exercise of such remedy.

**7.6. Confidentiality of ISA.** Each Party may disclose the terms and conditions of this ISA: (a) to the extent it is released of its obligations pursuant to Section 7.2(d); (b) as may be required by applicable securities laws and regulations; (c) in confidence to banks, investors and other financing sources and their advisors; (d) in confidence in connection with an actual or prospective merger or acquisition or similar transaction; and (e) in connection with the enforcement of this ISA or rights under this ISA.

## **8. WARRANTIES.**

**8.1. By Subscriber.** Subscriber represents and warrants to Infolinx that: (a) Subscriber has the authority to enter into this ISA and to perform its obligations under this ISA; (b) Subscriber’s performance of its obligations hereunder will not violate any other Subscriber agreement or any

applicable laws; (c) Subscriber owns or has licensed all required rights to all Subscriber Content necessary to perform its obligations and grant the rights granted to Infolinx under this ISA; (d) the Subscriber Content does not and shall not contain (i) any material or information that violates any applicable law, including Data Protection Laws, or IP Right of any third-party, or (ii) any software virus, surreptitious code, or other forms of malware; and (e) Subscriber will perform its obligations under this ISA in a professional and workmanlike manner.

**8.2. By Infolinx.** Infolinx represents and warrants to Subscriber that: (a) Infolinx has the authority to enter into and to perform its obligations under this ISA; (b) Infolinx's performance of its obligations hereunder will not violate any other Infolinx agreement or any applicable laws; (c) Infolinx owns or has licensed all required rights to all Infolinx Properties necessary to perform its obligations under this ISA; and (d) Infolinx will perform its obligations under this ISA in a professional and workmanlike manner in accordance with the Subscription Agreement. Infolinx's warranty obligations are solely for the benefit of Subscriber. Subscriber shall have no authority to extend or transfer any of these warranties to any third-party.

**8.3. Disclaimer of Warranties.** **SUBJECT TO THE INDEMNIFICATION PROVISION OF THE RFP, THE WARRANTIES SET FORTH IN THIS SECTION 8 ARE THE ONLY WARRANTIES OF THE PARTIES, AND NO OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, SHALL APPLY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH PARTY SPECIFICALLY DISCLAIMS ANY WARRANTIES OF DESIGN, SATISFACTION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. INFOLINX DOES NOT GUARANTEE THAT THE OPERATION OF THE INFOLINX CLOUD SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.**

## **9. LIMITATIONS OF LIABILITY.**

**9.1. Cap on Damages.** **EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3 AND THE INDEMNIFICATION PROVISION OF THE RFP, EACH PARTY'S LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS OR DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE AMOUNT OF THE FEES PAID BY SUBSCRIBER TO INFOLINX UNDER THIS ISA.**

**9.2. Limitation on Types of Recoverable Damages.** **EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3 AND THE INDEMNIFICATION PROVISION OF THE RFP, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER NON-DIRECT DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE FUNCTIONALITY, OPERABILITY, OR QUALITY OR PRODUCTS AND SERVICES PURSUANT TO THE RFP (INCLUDING CLAIMS FOR LOSS OF PROFITS, DATA, GOODWILL, USE OF MONEY OR USE OF ANY PRODUCT OR SERVICE), WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**9.3. Exclusions from Limitations of Liability.** Notwithstanding anything to the contrary expressed or implied in this ISA, the Limitations of Liability set forth in **Sections 9.1 and 9.2** shall not apply to: (a) damages arising out of or relating to a Party's failure to comply with its confidentiality obligations under this ISA; (b) damages arising out of or relating to a Party's obligation to comply with the indemnification provision of the RFP; (c) Subscriber's payment obligations under this ISA; (d) Subscriber's unauthorized use of any Infolinx Properties or infringement of any Infolinx IP Rights; or any third party claims arising from or related to any Subscriber Content.

## **10. DEFAULT.**

**10.1. Events of Default.** Each of the following shall constitute an event of default (each, an “*Event of Default*”), and the occurrence of one or more of which shall constitute a material breach of this ISA that shall allow a Party, as applicable, to seek the rights and remedies set forth in this ISA.

10.1.1. Either Party’s material breach of any of its representations or warranties or other obligations under this ISA that is not cured within 30 days following receipt of written notice of such material breach, provided that (i) a material breach of the confidentiality provisions of this ISA and either Party’s infringement of the other Party’s IP Rights, and (ii) Subscriber’s breach of warranty against viruses, surreptitious code or other malware in Subscriber Content, shall not be subject to a 30 day cure period.

10.1.2. Any Authorized User’s abuse or misuse of the Infolinx Cloud Services including reselling or attempting to resell the Infolinx Cloud Services to third parties or allowing unauthorized users access to the Infolinx Cloud Services, whether via the Subscriber Account or otherwise, hacking or attempting to hack into any area of the Infolinx Cloud Services whether inside or outside of the Subscriber Account, uploading any code to disrupt or otherwise contaminate the Infolinx Cloud Services with a virus or other malware, whether done via the Subscriber Account or otherwise. Notwithstanding anything expressed or implied to the contrary, the Subscriber shall not be entitled to a 30-day cure period for any Event of Default under this provision.

10.1.3. The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against a Party under any provision of the United States Bankruptcy Code or under any similar laws, if not dismissed within 30 days after instituted; an assignment for the benefit of creditors; or the appointment of a receiver for all or substantially all of a Party’s assets.

**10.2. Rights and Remedies Upon Event of Default.** Upon an Event of Default, the non-defaulting Party shall be entitled to: (a) terminate this ISA by written notice to the other Party; and/or (b) subject to the terms of Section 9, exercise any remedy at law or in equity available to such Party. Immediately upon termination or expiration of this ISA for any reason Subscriber shall have no right to access or use the Infolinx Cloud Services or any other Infolinx Properties.

**10.3. Survival.** The ISA Provisions such as those concerning ownership rights, confidentiality obligations, representations, warranties, indemnities, limitations on liabilities, remedies, and others clearly intended to survive, including those in Azure Agreement, will survive the termination or expiration of this ISA.

**11. SUPPORT SERVICES.** Subject to this ISA, Infolinx will provide the following support services to Subscriber during the Term of this ISA.

**11.1. Telephone.** Infolinx shall make available qualified personnel to provide telephone support to Subscriber from 8:30 a.m. through 5:00 p.m., Monday through Friday, Eastern Standard Time, excepting legal holidays. The aforementioned telephone support will include assistance with the Infolinx Cloud Services functionality.

**11.2. Response Time.** Infolinx will make all reasonable efforts to respond to Licensee’s Software-related support calls Monday through Friday, Eastern Standard Time, as follows:

Calls received before 12:00 noon: no later than 5:00pm the same day.

Calls received after 12:00 noon: no later than 10:00am the next business day.

**11.3. Third-Party Support.** Subscriber acknowledges that Infolinx shall be relying on Microsoft to provide certain support services via the Azure Agreement. Infolinx shall promptly notify Microsoft of all issues that Microsoft is responsible for under the Azure Agreement.

**11.4. Maintenance.** Infolinx and Microsoft may from time to time during the Term deem it necessary to perform maintenance services on their respective systems which may require shutting down access to the Infolinx Cloud Services. Infolinx shall use reasonable efforts to give Subscriber advance notice before shutting down Subscriber's access to the Infolinx Cloud Services. Whenever possible, Infolinx shall schedule such required shutdowns during off-peak hours.

**11.5. Customization.** Subscriber understands that special requests or material changes to the Subscription Agreement for customized Infolinx Cloud Services features or functions do not fall within the scope of routine support services. Infolinx shall not be obligated to customize the Infolinx Cloud Services to meet unique Subscriber requirements, but shall consider such requests on a case-by-case basis and reserves the right to refuse to customize the Infolinx Cloud Services or to charge its usual, customary and then-current service fees above and beyond the Fee otherwise payable based on Subscriber's selected Subscription Plan. Any agreement for customized Infolinx Cloud Services shall be agreed upon by the Parties in writing and shall include service fees.

**11.6. Subscriber Responsibility.** Services required due to (a) any unauthorized modifications to the Infolinx Cloud Services made by any Authorized User or Subscriber or its other employees, contractors or agents; (b) use of the Infolinx Cloud Services for any purpose other than authorized in this ISA; (c) Subscriber's failure to install any software or hardware updates or any operating system release recommended by Infolinx in a timely manner; (d) any willful or negligent action or omission of an Authorized User or Subscriber or its other employees, contractors or agents; or (e) any failure or interruption of any electrical power, or any accident or other cause external to the Infolinx Cloud Services including, but not limited to, unforeseen problems or malfunctions related to Subscriber's network or other network, database, third party software products, and/or workstation configurations, or Subscriber's hardware, shall be excluded from the support services offered under Section 11 of this ISA. Subscriber shall be responsible for all excluded services and for investigating its computer systems, including its own network, for any problems.

**11.7. Limitations.** Except for the support and maintenance services expressly provided in this ISA, Infolinx shall have no obligation to provide other forms of support, unless otherwise mutually agreed by the Parties in writing and paid for by Subscriber at Infolinx's then-current service rates.

## **12. MISCELLANEOUS.**

**12.1. Public Announcements.** Subscriber grants to Infolinx the right to use Subscriber's name on its website and in press releases, product brochures and marketing materials indicating the Subscriber and Infolinx relationship memorialized in this ISA. Any request by Infolinx for public disclosure or announcement shall be deemed approved by Subscriber if Subscriber does not deliver to Infolinx an objection thereto, in writing, within ten (10) business days of Infolinx's request.

**12.2. Construction.** Any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement shall not apply to this ISA. The headings of the Sections of this ISA are for convenience only and shall not affect the meaning of any provision. Except as otherwise specified, references herein to "days" means calendar days. Any use of the term "including" and "include" in this ISA shall be construed as if followed by the phrase "without limitation."

**12.3. Conflicts in Interpretation.** Any conflicts in the provisions of any of the ISA Documents shall be resolved giving preference in the following order: (i) the RFP; (ii) the ISA signature page; (iii) the ISA Provisions; (iv) Infolinx Service Level Agreement; and (v) the Azure Agreement.



**12.4. Severability.** Each provision of this ISA shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Moreover, if any provision contained in this ISA shall for any reason be held to be unenforceable at law, such provision shall be construed by the appropriate judicial body by limiting or reducing such provision, so as to be enforceable to the maximum extent allowed by law as such law shall then be in effect.

**12.5. Assignment.** This ISA shall bind and inure to the benefit of the successors and permitted assigns of each Party. Except as otherwise provided herein, neither Party shall have the right to assign or otherwise transfer its rights under this ISA without receiving the express prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Infolinx may assign or transfer this ISA, with Subscriber's prior written consent, to any affiliate or in the event of a merger or a sale of all or substantially all of Infolinx's assets or stock, provided that the assignee assumes all of Infolinx's obligations under this ISA. Any attempted assignment or delegation in violation of this ISA shall be void.

**12.6. Waiver of Default.** No waiver of any default by either Party shall be deemed to constitute a waiver of any subsequent default with respect to the same or any other provision hereof. No waiver shall be effective unless made in writing with specific reference to the relevant provision(s) of this ISA and signed by a duly authorized representative of the Party granting the waiver.

**12.7. Non-Exclusivity.** Infolinx is in the business of selling similar services and other web-based services. Infolinx shall have the right, without obligation of any kind to Subscriber, to provide to third-parties deliverables and services that are the same or similar to the deliverables and services provided hereunder, and to use or otherwise exploit any Infolinx Properties in providing such deliverables or services.

**12.8. Further Assurances.** Upon the reasonable request of either Party, the other Party shall execute all such documents and perform all such acts and things as may reasonably be required to deliver to the requesting Party the full benefit of the terms of this ISA.

**12.9. Notices.** All notices or other formal communications hereunder (other than routine business communications) shall be given in writing and sent via facsimile or email with confirmation or sent using first class certified mail, return receipt requested, postage prepaid, or nationally recognized overnight carrier, to the addresses set forth below:

If to Infolinx:                    Infolinx  
    10800 Connecticut Avenue  
    Kensington, Maryland 20895-2102  
    Attn: Ms. Amy Hamilton, President

If to Subscriber:                Subscriber's address set forth on the ISA signature page.

Notice shall be effective five (5) days after deposit if sent by mail, the next business day if sent by reputable overnight carrier, and if sent by facsimile or email upon receipt of electronic confirmation of delivery.

**12.10. Excused Delay.** The untimely performance of any obligation under this ISA by any Party shall be excused, and such delay of performance shall not constitute breach, or grounds for termination or prejudice of any rights hereunder, if the delay of performance is a result of circumstances or occurrences of force majeure beyond the reasonable control of the Party whose performance is excused hereunder, provided that such Party: (a) shall immediately resume performance after the cause of the delay is removed; and (b) shall during such delay be reasonably diligent in avoiding further delay. Without limiting the generality of circumstances or occurrences of force majeure beyond the reasonable

control of a Party, examples of such circumstances or occurrences are natural disasters; unavoidable shortages of power, materials or transportation; and acts of government or of God, sabotage, war, terrorism or insurrection. A Party whose performance may be affected by such an occurrence or circumstance of force majeure shall promptly give notice to the other Party of the occurrence or circumstance upon which it intends to rely to excuse its performance. Microsoft's decision to terminate the Azure Agreement without cause shall be deemed a force majeure occurrence relieving Infolinx from all obligation to continue providing Infolinx Cloud Services under this ISA.

**12.11. Relationship of Parties.** The Parties hereto expressly understand and agree that their relationship shall be that of independent contractors in the performance of each and every part of this ISA. Nothing in this ISA shall constitute one Party as an employee, agent, joint venture or other partner or servant of another. Each Party is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection with anything relating to this ISA or otherwise.

**12.12. Entire ISA.** All prior agreements, Subscriber purchase orders or arrangements, written or oral, between the Parties relating to the Infolinx Cloud Services or other subject matter hereof are hereby superseded by this ISA and the incorporated documents set forth herein.

Infolinx

Subscriber

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A – RFP #9-2016 RECORDS INVENTORY MANAGEMENT SYSTEM (37 PAGES)  
AND INFOLINX’S RESPONSE (43 PAGES)**

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**