

## NORTH CAROLINA

## WAKE COUNTY

### LICENSING AGREEMENT TO ACCESS DATA ONLINE

This **Licensing Agreement to Access Data Online** (“Agreement”) is entered into on the date set forth below between the North Carolina Administrative Office of the Courts (“the NCAOC”) and <<Licensee>> (“the LICENSEE”), a <<State of Incorporation>> <<Type of Legal Entity>>, (individually referred to as “the Party” and jointly referred to as the “Parties”). This Agreement is effective as of the date of the last signature hereon (“the Effective Date”).

The LICENSEE’s address is <<addr1>>, <<addr2>>, <<City>>, <<State>> <<Zip>>. The LICENSEE’s federal tax identification number is <<TaxID>>.

**WHEREAS**, the North Carolina trial courts shall be undergoing a digital transformation and moving towards a paperless environment with the implementation of a new integrated case management system hosted in a cloud environment, referred to herein as the NCAOC Information System;

**WHEREAS**, the NCAOC Information System will be rolled out across the State of North Carolina in phases, starting with four (4) pilot counties and then adding more and more counties over the course of approximately a few years until all counties are using the NCAOC Information System and the NCAOC Legacy System is retired;

**WHEREAS**, during the rollout of the NCAOC Information System, some counties will remain on NCAOC’s Legacy System, housed on premises at the NCAOC’s data center in Raleigh, North Carolina, and other counties will use the eCourts system hosted in the cloud;

**WHEREAS**, the current licensing agreement for online access provides that “[t]he LICENSEE will access the NCAOC computer in Raleigh, North Carolina, via a connection method offered by the NCAOC” (See Section 2.1.1.), but does not include LICENSEE’s ability to query for and receive RPA Cloud Data;

**WHEREAS**, the Parties will mutually benefit from entering into this updated Agreement because it provides that the LICENSEE shall have online access to the RPA Cloud, so statewide Data is still available to the LICENSEE as counties move to the NCAOC Information System;

**WHEREAS**, the NCAOC enters into this Agreement with the LICENSEE, pursuant to North Carolina General Statute § 7A-109(d), authorizing the NCAOC Director to enter into contracts for remote public access, including establishing the terms and conditions under which the NCAOC agrees to provide the LICENSEE electronic access to the NCAOC Legacy System and Legacy Data as well as the RPA Cloud and RPA Cloud Data;

**WHEREAS**, the NCAOC and the LICENSEE desire to allocate the risks and responsibilities related to LICENSEES’ Data usage, update, and accuracy duties, as well as redisclosure to their Customers and Subscribers, as set forth in this Agreement; and

**WHEREAS**, it promotes the NCAOC's statutory compliance and efficiency responsibilities for the NCAOC to share public Data with the LICENSEE.

**NOW THEREFORE**, in consideration of the terms and conditions set forth herein, the Parties hereto have mutually agreed to the terms and conditions of this Agreement as set forth below.

SAMPLE

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## 1. DEFINITIONS

- 1.1 **ACIS** means the Automated Criminal/Infractions System, the enterprise server (mainframe) criminal indexing application for criminal and infraction court filings in North Carolina, as provided and maintained for the clerks of superior court by the NCAOC. ACIS is part of the NCAOC Legacy System.
- 1.2 **Case** means a record or group of records constituting a single, independently filed action in the criminal or civil courts of a trial division of the North Carolina General Court of Justice.
- 1.2. **Case number** means a reference number used to indicate all records common to a single case, consisting of the year of filing, case type, and sequence number unique in the county of filing for the case type, within the year of filing.
- 1.3. **Contact Persons** means the two (2) contact persons named in Attachment C of this Agreement and their successors.
- 1.4. **Credentials** mean individual user identifier(s) provided by the NCAOC and used by the LICENSEE or its Customers or Subscribers to access the NCAOC Legacy System or the RPA Cloud or the service account identifier provided by the NCAOC for LICENSEE to access the RPA cloud via an API or any passwords used therewith.
- 1.5. **Customer** means a Person that directly or indirectly purchases or acquires from a LICENSEE any Data provided pursuant to this Agreement, whether repackaged, reformulated, reformatted, or copied, whether for its own use or to provide search services to its own Customers or Subscribers, if said Data are transmitted in a format that contains Data elements from more than one case.
- 1.6. **Data** means Legacy Data or RPA Cloud Data.
- 1.7. **Disaster Recovery Mode** means any incident or state of operations during which processing or Data storage for the NCAOC Information System, the NCAOC Legacy System, or the RPA Cloud is transferred from the its regular operating environment to a “backup” or “hot site” for continued operation, as the result of a disaster, including, but not limited to, damage to, destruction of, or threat to the NCAOC Information System, the NCAOC Legacy System, the RPA Cloud, the Transfer Method, or information technology or facilities by natural disaster, civil disorder, acts of war, terrorist acts, compromise of facility or network security, acts of God, or other events beyond the control of the NCAOC.
- 1.8. **File number** means a reference number used to indicate all records common to a single case. *See Case number.*
- 1.9. **Inaccurate data** means any data reported about a case by the LICENSEE to a Subscriber or Customer, which data do not match exactly the Data for that case as reflected in the NCAOC Legacy System, the NCAOC Information System, or the RPA Cloud at the time the LICENSEE reports the data to its Subscriber or Customer.
- 1.10. **Judicial Branch** means the North Carolina Judicial Branch.
- 1.11. **Legacy Data** means civil or criminal case Data stored in and accessible to a LICENSEE via the NCAOC Legacy System.
- 1.12. **NCAOC** means the North Carolina Administrative Office of the Courts, which is a state entity within the Judicial Branch.

- 1.13. **NCAOC Information System** means the integrated case management system hosted in vendor's cloud environment that will be implemented during the eCourts initiative and will replace the NCAOC Legacy System. LICENSEES will not access the NCAOC Information System directly for RPA Cloud Data.
- 1.14. **NCAOC Legacy System** means the NCAOC's legacy application(s), ACIS and VCAP, to which the LICENSEE will connect and access Legacy Data, for its own use or for redisclosure to its Customers or Subscribers, as well as the mainframe environment on which ACIS and VCAP are deployed.
- 1.15. **Person** means an individual or an entity, including, but not limited to, corporations, whether for profit or not for profit, partnerships, limited liability companies, and joint venturers.
- 1.16. **Priority Users** means officials, officers, employees, agents, and contractors of the Judicial Branch, and of other State and local government agencies, including, but not limited to, law enforcement agencies that access the NCAOC Legacy System or the NCAOC Information System in order to perform their official duties.
- 1.17. **Proprietary Information** means all Credentials, computer software, documentation, and user manuals, if any, supplied by the NCAOC to the LICENSEE pursuant to this Agreement, in addition to the types of information identified in Subsection 3.3.1.2 and Section 3.3.3 of this Agreement.
- 1.18. **RPA Cloud** means the NCAOC RPA AWS tenet that will initiate and send LICENSEE's query request for RPA Cloud Data through the Transfer Method to the vendor's AWS tenet, and will receive and store the RPA Cloud Data sent back through the Transfer Method for access by the LICENSEE.
- 1.19. **RPA Cloud Data** means criminal or civil case Data accessible to a LICENSEE via the RPA Cloud.
- 1.20. **Signatory** means the individual authorized to sign this Agreement on the NCAOC's or the LICENSEE's behalf for access to the Data.
- 1.21. **Subscriber** means any Person that acquires from the LICENSEE the results of the LICENSEE's search of any Data provided to the LICENSEE pursuant to this Agreement, or subsets of that Data, or the right to conduct its own searches of that Data or subsets thereof.
- 1.22. **Transfer Method** means the Remote Public Access security and billing management broker and environment for the API(s) and user interface through which query requests and RPA Cloud Data will be transferred from and to the RPA Cloud. An API is an Application Programming Interface, which defines interactions between multiple software intermediaries without any user involvement, including the kinds of programming calls or requests that can be made, how to make them, and the data formats that should be used. In practice, an API can use any protocols or design styles, be on- or off-line, and support XML and JSON.
- 1.23. **VCAP** means the Civil Case Processing System, the enterprise server (mainframe) indexing application for civil court filings in North Carolina, as provided and maintained for the clerks of superior court by the NCAOC. VCAP is part of the NCAOC Legacy System.

## **2. GRANT OF LICENSE**

The NCAOC hereby grants a non-exclusive license to the LICENSEE to connect to the NCAOC Legacy System using an NCAOC-approved legacy connection method, and to access and initiate a query in the RPA Cloud using the Transfer Method, to obtain Data according to the terms and conditions set forth in this Agreement. In consideration of the mutual promises made to each other, as herein set forth, the NCAOC and the LICENSEE agree as follows.

## **3. TERMS AND CONDITIONS FOR LICENSEE'S ACCESS AND USE**

### **3.1 Basic Transaction.**

- 3.1.1 This Agreement will govern the NCAOC's provision of access to Data to the LICENSEES, including Legacy Data in the NCAOC Legacy System and RPA Cloud Data in the RPA Cloud.
- 3.1.2 The LICENSEE will access the NCAOC Legacy System by utilizing an NCAOC-approved method of connection listed in the legacy technical documentation, "New Legacy Remote Public Access Connectivity Information." The LICENSEE will access the RPA Cloud using Credentials.
- 3.1.3 The NCAOC will provide the LICENSEE with two (2) types of technical documentation, explaining the software and equipment necessary for the LICENSEE to access both the NCAOC Legacy System and the RPA Cloud. The LICENSEE will, at its expense, provide any and all software and equipment required to maintain its connection.
- 3.1.3 Limited Help Desk and technical services, subject to the availability of NCAOC staff and resources, are extended to the LICENSEE for the purpose of resolving technical support problems with accessing Data from the NCAOC, and will be provided to or coordinated with only the individuals designated pursuant to Section 7 of this Agreement, on behalf of the LICENSEE.
- 3.1.4 The NCAOC specifically reserves the right, in its sole discretion, to alter its NCAOC Legacy System, RPA Cloud, Transfer Method, NCAOC Information System, legacy connection requirements, operating hours, and network services, including application screen and/or display changes, at any time and without prior notice to the LICENSEE.
- 3.1.5 Pursuant to the terms of this Agreement, the LICENSEE will be given the non-exclusive right to access and use the NCAOC Legacy System, the RPA Cloud, the Transfer Method, and the Data, as limited by the scope of licensed use set forth specifically below in Section 3.2, as well as any other applicable sections of this Agreement.

### **3.2 Scope of Licensed Use.**

- 3.2.1 The LICENSEE's access to the NCAOC Legacy System, the RPA Cloud, and the Transfer Method provided pursuant to this Agreement is limited solely to accessing, querying, and transmitting Data authorized by the NCAOC on a transaction-by-transaction basis to and from the NCAOC Legacy System, the RPA Cloud, and the Transfer Method to the LICENSEE's remote access system, and making it accessible to the LICENSEE's Customers or Subscribers. The LICENSEE may not use or authorize the use of the NCAOC Legacy System, the

RPA Cloud, or the Transfer Method for any other purposes than those approved in this Agreement without prior written consent of the NCAOC.

- 3.2.2 By supplying Data to the LICENSEE, the NCAOC is not granting the LICENSEE any rights other than those specified in this Agreement.

### 3.3 Obligations of the LICENSEE.

#### 3.3.1 NCAOC Legacy System or the RPA Cloud

- 3.3.1.1 The LICENSEE hereby agrees to supply the NCAOC with all company, Contact Person, and password administrator information required under Section 7 of this Agreement, and to abide by the additional terms and conditions therein for contact between the NCAOC and the LICENSEE.

- 3.3.1.2 **Proprietary Information.** The LICENSEE recognizes and hereby acknowledges that the NCAOC Legacy System, the NCAOC Information System, the RPA Cloud, the Credentials, and the Transfer Method are the property of the NCAOC or its vendor(s) and are subject to the proprietary rights of the NCAOC or its vendor(s). The LICENSEE agrees to hold all in the strictest confidence. The LICENSEE further agrees to exercise at all times the same care with respect to the NCAOC Legacy System, the RPA Cloud, the Credentials, the Transfer Method, and any other materials or information provided hereunder by the NCAOC as the LICENSEE should and would exercise in the protection of the LICENSEE's own information or property.

- 3.3.1.3 The LICENSEE hereby agrees it will comply with the license, access, or use terms in this Agreement and that it will not alter or modify the Data, the NCAOC Legacy System, the RPA Cloud, or the Credentials supplied by the NCAOC, without the prior written permission of the NCAOC.

- 3.3.1.4 The LICENSEE hereby agrees to pay all amounts due under this Agreement, as described below in Section 4, including payment for: any and all access to the NCAOC Legacy System or the RPA Cloud; for all individual user Credentials provided to the LICENSEE, its Customers, or its Subscribers under this Agreement for access to the NCAOC Legacy System, Legacy Data, the RPA Cloud, and RPA Cloud Data; and for all service account Credentials provided to the LICENSEE for access to the RPA Cloud and RPA Cloud Data.

- 3.3.1.5 The LICENSEE recognizes and hereby acknowledges that the NCAOC has no obligation to maintain or upgrade the Data, the NCAOC Legacy System, the RPA Cloud, the legacy connection requirements, the NCAOC Information System, or the Transfer Method, provided by the NCAOC under this Agreement, except as the NCAOC deems necessary.

- 3.3.1.6 The LICENSEE recognizes and hereby acknowledges that the official custodian of all official court records for each county is the clerk of superior court of that county, and that the NCAOC is not the official custodian of any record provided.

- 3.3.1.7 The LICENSEE will not identify the NCAOC as the source of any data

about a Person, other legal entity, or court proceeding, provided to a Customer or Subscriber, if the data provided, in whole or in part, does not match exactly the current content, if any, from the identified Data in the NCAOC Legacy System, the RPA Cloud, or the NCAOC Information System at the time of the Customer's or Subscriber's inquiry that resulted in the provision of the data.

Whether or not the LICENSEE identifies the NCAOC as the source of any data, if the LICENSEE provides data to a Customer or Subscriber that does not match as described above, the LICENSEE agrees to execute a performance bond, as described in Subsection 5.2.4, and as provided on form AOC-A-204 (*Performance Bond for Licensing Agreement*), and to be bound to the terms and conditions thereof.

3.3.1.8 If the LICENSEE identifies the NCAOC at any time or in any manner as the source of any data provided to a Customer or Subscriber, the LICENSEE hereby agrees to do the following:

- 1) To prominently display a disclaimer in each report of data provided to a Subscriber, with each transfer of data to a Customer, and at each search access portal made available to a Subscriber. The disclaimer shall read:

“The official custodian of all official court records for each county in North Carolina is the clerk of superior court of that county. The North Carolina Administrative Office of the Courts is not the official custodian of any case record and provides only copies of data entered by the clerks. To verify a record's accuracy, contact the clerk of the county of record.”

- 2) To provide each of its Customers and Subscribers with a copy of the “No Warranties” and “Limitation of Liability – Access to NCAOC Legacy System and RPA Cloud” sections of this Agreement.

3.3.1.9 The LICENSEE recognizes and hereby acknowledges that the NCAOC has no responsibility or obligation to the LICENSEE's Customers or Subscribers, nor will the NCAOC incur any liability to or for such Customers or Subscribers as a result of this Agreement. The LICENSEE acknowledges that it is solely responsible for its Customers' and Subscribers' support, and agrees that it shall not refer any Customer or Subscriber to the NCAOC for support purposes or for information concerning Data received from the NCAOC and provided to such Customers or Subscribers by the LICENSEE.

3.3.1.10 The LICENSEE agrees to provide the NCAOC with a list of the LICENSEE's Customers and Subscribers, upon request of the NCAOC, within ten (10) calendar days of the NCAOC's request.

3.3.1.11 The LICENSEE agrees to require its Customers and Subscribers not to state or advertise in any way that they acquired their data from the NCAOC or that the NCAOC is the source of their data.



- 3.3.1.12 As part of this Agreement (*See Attachment B*), the LICENSEE agrees to provide the NCAOC with a list of all of the LICENSEE's websites, subsidiaries that use or distribute Data obtained from the NCAOC, and all other names by which the LICENSEE does business. The LICENSEE agrees to update this list and send it to the NCAOC within thirty (30) calendar days of any change.
- 3.3.1.13 The LICENSEE agrees to notify the NCAOC within thirty (30) calendar days of any change of ownership of the LICENSEE. If the former owner maintains no interest in the LICENSEE, this Agreement will terminate, and a new Agreement will be required for the new company to become a LICENSEE.

### 3.3.2 Data Accessed

- 3.3.2.1 The LICENSEE recognizes, acknowledges, and agrees that its rights under this Agreement to gain access to the Data, the NCAOC Legacy System, the Transfer Method, and the RPA Cloud are subject to priority use by judges, district attorneys, clerks of court, public defenders, magistrates, NCAOC employees and their staff and agents, and other State and local government agencies, including but not limited to, law enforcement agencies ("Priority Users"), who access the Data, the NCAOC Legacy System, the Transfer Method, the RPA Cloud, or other technology resources supplied by the NCAOC, in order to perform their legal duties.
- 3.3.2.2 The LICENSEE acknowledges that, should the NCAOC experience a NCAOC Legacy System, NCAOC Information System, RPA Cloud, or Transfer Method outage or crash such that disaster recovery is activated to run the NCAOC Information System, the RPA Cloud, Transfer Method, or the NCAOC Legacy System, the LICENSEE will neither have access to the NCAOC Legacy System, the RPA Cloud, or the Transfer Method, nor will the LICENSEE be entitled to access the NCAOC Legacy System, the RPA Cloud, or the Transfer Method while the NCAOC is operating the NCAOC Legacy System, the NCAOC Information System, the RPA Cloud, or the Transfer Method in Disaster Recovery Mode.
- 3.3.2.3 The LICENSEE acknowledges and agrees that the NCAOC may at any time, for any reason, delay, limit, or deny access to the NCAOC Legacy System, the RPA Cloud, or the Transfer Method, or in the event the demand on the NCAOC Legacy System, the NCAOC Information System, the Transfer Method, or the RPA Cloud by Priority Users prevents further access to the NCAOC Legacy System, NCAOC Information System, Transfer Method, or the RPA Cloud by users other than the Priority Users, including the LICENSEE. The NCAOC shall make reasonable efforts to provide the LICENSEE with prompt written notice of the denial of access and the anticipated duration of such denial of access.
- 3.3.2.4 The LICENSEE acknowledges and agrees that the NCAOC may, at any time, delay, limit, or deny access to the NCAOC Legacy System, the

NCAOC Information System, the Transfer Method, or the RPA Cloud for required system maintenance. The NCAOC shall make reasonable efforts to provide the LICENSEE with prompt notice of the denial of access and the anticipated duration of such denial of access.

3.3.2.5 The LICENSEE acknowledges and agrees that the NCAOC's denial or refusal of access to the LICENSEE shall not be a basis for termination of this Agreement, except as provided in Section 9, nor shall it be considered a breach of this Agreement.

### 3.3.3 Prohibited Use of Judicial Branch, NCAOC, and any NCAOC Vendor Proprietary Information

3.3.3.1 Logos, marks, documents, names, and acronyms of the Judicial Branch and the NCAOC are the sole property of the NCAOC.

3.3.3.2 The LICENSEE shall not use or display, in whole or in part, the Judicial Branch's, the NCAOC's, or any NCAOC vendors' names; documents; screen shots; logos; copyrighted materials; disclaimers; terms; system, application, or environment names, including, but not limited to the NCAOC Legacy System, the NCAOC Information System, the Transfer Method, or the RPA Cloud; calendars; forms; or any other documents in the LICENSEE's literature, advertisements, promotional materials, demonstrations, or applications. Further, except as required by Subsection 3.3.1.8 of this Agreement, the LICENSEE may not use or display any information concerning the Judicial Branch, the NCAOC, or any NCAOC vendors without the express written permission of the NCAOC or its vendor(s), as applicable.

3.3.3.3 Any use by the LICENSEE of information stated in Subsection 3.3.3.2 above that in the opinion of the NCAOC is false or misleading, gives the appearance of the LICENSEE's application, entity, or services being owned, maintained, approved, sponsored, certified, or endorsed by the NCAOC, the Judicial Branch, or any NCAOC vendors may in the sole discretion of the NCAOC be a basis for termination of this Agreement for cause.

## 4. THE LICENSEE'S PAYMENT DUTIES

4.1 The LICENSEE agrees to pay all amounts due under this Agreement, as specified in Attachment A, "Online Access Fees – NCAOC Legacy System and RPA Cloud," which Attachment A is attached hereto and incorporated herein as if fully set out. Online Access Fees are recalculated periodically. The LICENSEE will be provided at least thirty (30) calendar days' notice before the effective date of any change in fees.

4.2 The LICENSEE will be charged a non-refundable setup fee for access to the NCAOC Legacy System and RPA Cloud that **must be paid with a cashier's check**. This setup fee will include two (2) legacy user IDs which the LICENSEE can use to set up a password to access the NCAOC Legacy System, two (2) password admin IDs for resetting passwords in the NCAOC Legacy System, one (1) RPA Cloud service account ID and password to access the RPA Cloud via an API, and two (2) individual user IDs to access the RPA Cloud via a user interface.

- 4.3 For access to the NCAOC Legacy System, the LICENSEE will be charged an access fee per transaction, as provided in Attachment A. For access to Legacy Data, a “transaction” is defined as each new task, indicated by the pressing of the “Enter” key, the “PA1,” “PA2,” or “PA3” keys, the function keys “F1” through “F12,” or the “Clear” key. Most times when a transaction occurs, a new screen appears, but that is not always the case. For access to RPA Cloud Data, each query call to the Transfer Method will be considered a new transaction. The LICENSEE may be billed for any recurring, fixed, and variable costs that are agreed to prior to billing.
- 4.4 If this Agreement is terminated and the LICENSEE’s access to the NCAOC Legacy System and the RPA Cloud are disconnected pursuant to Subsection 9.7 of this Agreement, if the NCAOC consents to reinstate the LICENSEE’s access, the LICENSEE must **first** pay any arrearages and the reinstatement fee set forth in Attachment A. **This payment must be made with a cashier’s check.**
- 4.5 In the event there is an increase in the NCAOC’s costs of operation, or the NCAOC updates, upgrades, modifies, enhances, or otherwise improves the Transfer Method, the mainframe capacity of its NCAOC Legacy System, or the capacity of its NCAOC Information System or RPA Cloud, after the date of this Agreement, the NCAOC reserves the right to adjust the online fees set forth in Attachment A. Before any fee adjustments take effect, however, the NCAOC will give the LICENSEE advance notice by providing the LICENSEE with a new Attachment A, amending Attachment A in this Agreement, at least thirty (30) calendar days before the effective date of the adjustment (“Notice”). Within twenty (20) calendar days after receiving Notice of the fee increase, the LICENSEE will notify the NCAOC whether the LICENSEE agrees to the increase. If the LICENSEE does not notify the NCAOC of its agreement or objection to the increase within such twenty (20) day period, the LICENSEE will be deemed to have accepted the increase. If the LICENSEE objects to the increase, this Agreement will terminate on the last day before the increase takes effect. Nothing in this Section will prevent either Party from terminating this Agreement in accordance with Section 9.3.
- 4.6 If the LICENSEE is found to have provided data not matching the Data in the NCAOC Legacy System, the NCAOC Information System, and the RPA Cloud at the time of the LICENSEE’s provision of the data, the LICENSEE will be required to execute a performance bond, as described in Section 5 below, in the amount specified in Attachment A.
- 4.7 If the LICENSEE changes its name or tax ID after entering into this Agreement with the NCAOC, the LICENSEE must submit a change in name or tax ID form within thirty (30) calendar days of the change, along with the change fee, if required (*See Attachment A for the schedule of fees*). If the ownership of the LICENSEE changes after the execution of this Agreement, a new Agreement with a new setup fee is required. The LICENSEE’S failure to notify the NCAOC of a change in its ownership, within thirty (30) calendar days of its completion, is a ground for termination of this Agreement for cause, pursuant to Subsection 3.3.1.13.

## 5. THE LICENSEE’S UPDATE AND ACCURACY DUTIES

- 5.1 It is the LICENSEE’s duty to update and provide accurate data to its Customers or Subscribers. Pursuant to Subsection 3.3.1.7, the data provided must match exactly the current content, if any, of the Data from the identified record in the NCAOC Legacy

System, the NCAOC Information System, and the RPA Cloud at the time of the Customer's or Subscriber's inquiry that resulted in the provision of the data.

## **5.2 Liquidated Damages and Performance Bond.**

5.2.1 The LICENSEE acknowledges that any breach of its update and accuracy duties may:

5.2.1.1 cause it to provide Inaccurate data to its Subscribers and Customers, thus creating the potential for substantial harm to persons whose records are affected and to others who rely on those records.

5.2.1.2 cause the NCAOC to incur personnel, technology, and other costs in receiving, investigating, and responding to complaints; verifying inaccuracies and identifying their source; and enforcing the LICENSEE's compliance with its duties under this Agreement.

5.2.1.3 cause the NCAOC to incur further expense in dealing with claims arising from the LICENSEE's breach of this Agreement.

5.2.2 The Parties agree that any damages incurred by the NCAOC as a result of any such breach are to some extent speculative and difficult to determine after the breach.

5.2.3 Therefore, in order to avoid litigation concerning the nature and extent of the damages resulting from each such breach, to provide the NCAOC with reasonable compensation for those damages, to limit the LICENSEE's exposure to an agreed amount, and to provide an incentive to the LICENSEE to maintain accurate data, after two (2) verified breaches of the LICENSEE's data update and accuracy duties, the LICENSEE will pay to the NCAOC, immediately upon the NCAOC's verification of the breach, liquidated damages in the amount set forth in Attachment A.

5.2.4 To secure the payment of the liquidated damages, as provided in Subsection 5.2.3 above, the LICENSEE, upon the first verified breach of its data accuracy and update duties, must submit to the NCAOC a completed Form AOC-A-204 (*Performance Bond for Licensing Agreement*). A performance bond in either of the following two (2) forms must be deposited with the NCAOC at the same time:

5.2.4.1 A cash bond by cashier's check in the amount specified in Attachment A under "Performance Bond," to be held by the NCAOC in a non-interest bearing account, or

5.2.4.2 A corporate surety bond of the same amount, secured by at least one (1) corporate surety.

The LICENSEE must provide annual proof of the renewal or continued maintenance of the bond. The LICENSEE'S failure to provide such proof within seven (7) calendar days of the request or the expiration or termination of the bond is grounds for termination of this Agreement, pursuant to Section 9.7.

Upon notification to the LICENSEE that the NCAOC has verified a breach of the LICENSEE's update and accuracy duties, as described in Section 5.1 of this Agreement, the LICENSEE shall immediately pay to

the NCAOC the liquidated damages amount indicated in Attachment A to this Agreement. If the NCAOC has not received payment of the liquidated damages within thirty (30) calendar days of notice and demand to the LICENSEE, the NCAOC shall pursue forfeiture of the LICENSEE's bond posted pursuant to this section, of which the enforcement costs, including, but not limited to, court costs and attorney fees, shall be borne by the LICENSEE. Liquidated damages must be submitted to the NCAOC by cashier's check.

5.2.5 Following the NCAOC's verification of the LICENSEE's second provision of Inaccurate data, this Agreement will terminate for cause in accordance with Section 9.2 and will not be reinstated.

5.2.6 Within thirty (30) calendar days after termination of this Agreement, under conditions that do not require the forfeiture of the bond, the bond will terminate and any funds deposited with the NCAOC will be refunded to the LICENSEE.

## **6. THE LICENSEE'S OTHER DUTIES**

6.1 **Response to Complaints – Investigation and Termination.** The LICENSEE acknowledges and agrees that reports of errors in data provided by the LICENSEE to its Subscribers or Customers or any other failure to comply with the LICENSEE's data accuracy and update duties will be subject to investigation and response by the NCAOC, as described in this Section.

6.1.1 Upon any report or complaint that data provided directly or indirectly by the LICENSEE to any Person are inaccurate, the NCAOC will first investigate to verify the following:

6.1.1.1 The LICENSEE's data referenced by the complainant are, in fact, inaccurate; and

6.1.1.2 The LICENSEE receives Data from the NCAOC.

6.1.2 Upon such verification, the NCAOC will notify one of the LICENSEE's Contact Persons of the inaccuracy.

6.1.3 Upon such notification, if it is the LICENSEE's first provision of Inaccurate data, the LICENSEE will have a reasonable time to correct the inaccuracy.

6.1.4 When the NCAOC is satisfied that the LICENSEE's records are accurate and the data that were the source of the complaint have been corrected, the NCAOC will so notify the LICENSEE's Contact Person and the complainant of the correction. Pursuant to Subsection 5.2.4 above, the LICENSEE, to continue its access to the NCAOC Legacy System, the RPA Cloud and the Transfer Method, will be required to provide a performance bond to secure payment of liquidated damages due upon a subsequent breach of its duty to update and provide accurate data.

6.1.5 Upon a subsequent report or complaint that data provided by the LICENSEE to any Person are inaccurate, the NCAOC will investigate and verify the inaccuracy as provided above. The NCAOC will notify one (1) of the LICENSEE's Contact Persons of the inaccuracy, as well as the LICENSEE's duty to update, if it is the LICENSEE'S second provision of Inaccurate data, to pay liquidated damages in the amount set forth in Attachment A, pursuant to Subsection 5.2.3 above. These

liquidated damages are due and payable independent of the LICENSEE's corrective action, as explained in Subsection 5.2.3 above.

- 6.1.6 If the LICENSEE provides Inaccurate data in two (2) separate, unrelated cases, and both inaccuracies are verified as provided in Subsection 6.1.5, above, this Agreement will immediately terminate and will not be reinstated.
- 6.1.7 In order to allow the NCAOC to conduct the investigation and verification provided for in this Subsection, as well as random security checks, the LICENSEE shall provide complete records from the LICENSEE's database(s) to the NCAOC within five (5) business days after receipt of a list of names or Case numbers from the NCAOC.
- 6.1.8 The NCAOC is under no obligation to notify the LICENSEE of any complaint during the course of the NCAOC's investigation or after its conclusion, should the NCAOC determine that the LICENSEE's data are accurate, or that the source of the data was an entity other than the NCAOC.
- 6.1.9 The NCAOC is under no obligation to identify the specific data that are the source of a complaint, and may, in fact, be prohibited by law from doing so.
- 6.1.10 Any failure by the LICENSEE to comply with an instruction given by the NCAOC pursuant to Subsection 6.1 will result in immediate termination of this Agreement.
- 6.1.11 **BY INVESTIGATING, VERIFYING, AND CONFIRMING A CORRECTION AS PROVIDED IN THIS SECTION, THE NCAOC ASSUMES NO OBLIGATION TO THE LICENSEE WITH REGARD TO THE LICENSEE'S POTENTIAL LIABILITY TO A COMPLAINANT OR ANY OTHER PERSON AS A RESULT OF THE DISSEMINATION OF INACCURATE DATA UNDER INVESTIGATION.**

## **6.2 Data Access, Transfer Method, Connection Method.**

- 6.2.1 The NCAOC agrees to provide the Transfer Method through which the LICENSEE will transmit its query from the RPA Cloud to the vendor's AWS tenant and the RPA Cloud Data will be sent back to the RPA Cloud. Additionally, for the individual RPA user accounts provided to the LICENSEE, the NCAOC agrees to provide a web-based user interface to initiate such queries and view results.
- 6.2.2 The LICENSEE will provide and utilize an NCAOC-approved connection method to connect to, access, and obtain Legacy Data in the NCAOC Legacy System.
- 6.2.3 The LICENSEE is granted non-exclusive, non-transferable access to the NCAOC Legacy System, the RPA Cloud, and the Transfer Method for the sole purpose of receiving Data from the NCAOC as outlined in this Agreement. LICENSEE shall only access the NCAOC Legacy System, the RPA Cloud, and the Transfer Method from locations within the United States. LICENSEE may allow its Customers and Subscribers to use individual user Credentials assigned to LICENSEE under this Agreement subject to all of the following conditions: (i) LICENSEE shall be solely responsible for complying with the terms and conditions of this Agreement with respect to any and all Credentials issued to

LICENSEE by the NCAOC; (ii) LICENSEE shall be solely responsible for its Customers' and Subscribers' compliance with this Agreement, such as only accessing the NCAOC Legacy System, the RPA Cloud, and the Transfer Method from locations within the United States; (iii) LICENSEE's Customers and Subscribers using Credentials issued to LICENSEE shall be deemed LICENSEE's agents for purposes of this Agreement; (iv) LICENSEE's Customers and Subscribers shall not contact the NCAOC for support, password resets, or any other reason; (v) LICENSEE's password administrators are solely responsible for contacting the NCAOC to reset passwords on behalf of LICENSEE's Customers and Subscribers; (vi) LICENSEE shall be solely liable to the NCAOC for any breach of this Agreement by its Customers or Subscribers as if the LICENSEE had breached this Agreement itself; (vii) any and all remedies under this Agreement or applicable law that the NCAOC has against LICENSEE, such as liquidated damages and indemnification, shall apply equally to LICENSEE's responsibility for the acts and omissions of its Customers and Subscribers; (viii) LICENSEE's Customers and Subscribers shall not be third party beneficiaries under this Agreement; and (x) the NCAOC neither owes any duties to LICENSEE's Customers or Subscribers, nor shall the NCAOC be liable to LICENSEE's Customers or Subscribers under this Agreement.

- 6.2.4 The NCAOC Legacy System, the RPA Cloud, all Credentials, and the Transfer Method issued by the NCAOC to the LICENSEE, in connection with obtaining access to all Data, are and shall remain the exclusive property of the NCAOC or its vendor.
- 6.2.5 The LICENSEE shall maintain the confidentiality and security of the NCAOC Legacy System, the RPA Cloud, the Transfer Method, and the Credentials, as well as any Credentials used to connect to the NCAOC Legacy System by LICENSEE's personnel, Customers, or Subscribers. The LICENSEE shall encrypt the Credentials and any credentials used to connect to the NCAOC Legacy System, so they are not accessible in plain text and shall store the Credentials and any credentials used to connect to the NCAOC Legacy System in a secure location, using access controls and authentication to solely restrict access of such Credentials and any credentials used to connect to the NCAOC Legacy System to only the minimum of those who require access to the NCAOC Legacy System, the RPA Cloud, the Transfer Method, or the legacy connection method in furtherance of "least privilege." LICENSEE's personnel, Customers, and Subscribers must access the NCAOC Legacy System, the RPA Cloud, and the Transfer Method from locations within the United States.
- 6.2.6 When Credentials are updated annually, the LICENSEE shall change its issued Credentials immediately to maintain access to and use the NCAOC Legacy System, the RPA Cloud, and the Transfer Method, as applicable, and delete/destroy the previous set of Credentials, so they are not accessible. The LICENSEE shall update any credentials used to connect to the NCAOC Legacy System and access Legacy Data, at least annually.
- 6.2.7 The LICENSEE agrees to provide necessary resources to help support the purpose(s) of this Agreement. Such resource(s) shall assist in troubleshooting issues or error messages as they pertain to the Data accessed via the Transfer

Method or as related to the Data access process. The LICENSEE shall provide its respective resource(s) in a timely manner to achieve the LICENSEE's objectives.

### **6.3 Security Requirements.**

- 6.3.1 The LICENSEE shall maintain up-to-date security patches, scans, and firewalls and utilize all industry best practices to maintain the security of their information system and infrastructure environment that will access or store the Data provided to the LICENSEE by the NCAOC.
- 6.3.2 If anyone gains unauthorized access to the NCAOC Legacy System, the RPA Cloud, the NCAOC Information System, NCAOC network, Credentials, the Transfer Method, the Data provided by the NCAOC, any credentials used to connect to the NCAOC Legacy System, or the legacy connection method, which is used to access, query, transmit, or store Data ("Unauthorized Access"), such Unauthorized Access will be a material breach of this Agreement and will be a ground for termination for cause in accordance with Section 9.2.
- 6.3.3 The LICENSEE shall notify the NCAOC immediately if there is Unauthorized Access. If there is Unauthorized Access, the NCAOC shall immediately terminate LICENSEE's access to the Data, including terminating access to all Credentials, the NCAOC Legacy System, the RPA Cloud and the Transfer Method. The NCAOC will order an immediate forensic examination of the reported or discovered incident. The LICENSEE shall be responsible for the cost of the forensic examination and for any damages, including, but not limited to, damage to the reputation of the Judicial Branch or the NCAOC and physical and logical damage to the NCAOC Legacy System, the RPA Cloud, the NCAOC Information System, the NCAOC network, the Transfer Method, or the Data, caused to the NCAOC by any such Unauthorized Access. Confirmation of an Unauthorized Access will be a ground for termination of this Agreement for cause in accordance with Section 9.2.

### **6.4 Payment Provisions.**

- 6.4.1 The LICENSEE will be billed monthly for NCAOC Legacy System and RPA Cloud access charges incurred within the billing period (a single calendar month). Payment by LICENSEE is due within thirty (30) calendar days of the date of the monthly bill. Checks must be made to the "North Carolina Administrative Office of the Courts" and mailed to the following address:

North Carolina Administrative Office of the Courts  
Financial Services Division – Accounts Receivable  
Post Office Box 2448  
Raleigh, North Carolina 27602
- 6.4.2 If LICENSEE's payment is not received by the NCAOC within thirty (30) calendar days of the date of the monthly bill, a late fee, as set forth in Attachment A, will be assessed to LICENSEE and will be due and payable by the second day of the following month.
- 6.4.3 If any payment due under the terms of this Agreement becomes sixty (60) calendar days in arrears, the NCAOC will immediately terminate this Agreement for cause and disconnect the LICENSEE's access to the NCAOC Legacy System,



the NCAOC Information System, the Transfer Method, and the RPA Cloud. The LICENSEE may be permitted to reinstate this Agreement and the LICENSEE's access to the NCAOC Legacy System and the RPA Cloud hereunder, but reinstatement is within the sole discretion of the NCAOC's Chief Operations Officer (COO) or her or his designee. In addition to any other condition that the COO deems appropriate, reinstatement is dependent upon the LICENSEE's compliance with the terms of reinstatement set forth below in Section 9.7 of this Agreement.

## **7. CONTACT INFORMATION AND NOTICES**

- 7.1 The LICENSEE shall update and provide all contact information requested in Attachment C, attached hereto this Agreement and incorporated herein by reference.
- 7.2 The LICENSEE shall designate up to two (2) Contact Persons in Attachment C. At no time shall there be more than two (2) Contact Persons for the LICENSEE.
- 7.3 The two (2) Contact Persons are the only individuals, in addition to the Signatory(ies) to this Agreement (if different), permitted to contact the NCAOC on the LICENSEE's behalf for any reason other than as provided below in Section 7.5, which allows LICENSEE's password administrators to contact the NCAOC Help Desk for certain password resets. At least one (1) of these Contact Persons shall be available to the NCAOC on weekdays from 8:00 a.m. until 5:00 p.m., Eastern Time, with the exception of legal holidays on which North Carolina state government offices are not open. The LICENSEE expressly represents that any person designated as a Contact Person is its legal agent with full authority to act individually on the LICENSEE's behalf for performance and fulfillment of the LICENSEE's obligations under this Agreement, including, but not limited to, notifying the NCAOC of changes to the LICENSEE's contact information, Contact Persons, or password administrators; receiving any and all notices from the NCAOC under this Agreement; and responding to the NCAOC's requests for information or action from the LICENSEE.
- 7.4 The LICENSEE shall designate up to two (2) password administrators in Attachment C. At no time shall there be more than two (2) password administrators for the LICENSEE.
- 7.5 The LICENSEE's two (2) listed password administrators are responsible for managing the LICENSEE's Credentials for access to the NCAOC Legacy System. The password administrators are responsible for resetting revoked or expired passwords for legacy user IDs except for the legacy user IDs assigned to the LICENSEE's password administrators. The NCAOC Help Desk will reset passwords for legacy user IDs assigned to the individual password administrators after confirmation satisfactory to the NCAOC that the individual requesting the reset ID is one of LICENSEE's password administrators. To reset a revoked or expired password for any RPA Cloud service account or individual user IDs, one of the password administrators shall make a request to the NCAOC Help Desk, which will be responsible for resetting the password after confirmation satisfactory to the NCAOC that the requester is one of LICENSEE'S password administrators. The LICENSEE acknowledges and agrees that it is within the sole discretion of the NCAOC to delay the reset of a password for a password administrator's legacy user ID or any RPA Cloud user ID for a reasonable time until NCAOC Help Desk staff or Remote Public Access staff is satisfied that a request for such reset has been made by one of LICENSEE's password administrators. This verification process may include a demand

for a written request from a Contact Person or a Signatory to this Agreement for reset of the password in question.

- 7.6 An individual may be both a Contact Person and a password administrator for the LICENSEE, but such individual must be designated separately as both in Attachment C, and the LICENSEE must provide all information requested for that individual in both roles.
- 7.7 Any change to the LICENSEE's contact information, Contact Person information, or password administrator information shall be communicated to the NCAOC immediately after such change by updating the LICENSEE Contact Information in Attachment C by returning the updated Attachment C by email (preferred), facsimile, or mail to either of the addresses listed below in Section 7.9.
- 7.8 Any notice or other communication from the NCAOC to the LICENSEE shall be deemed sufficient if sent to either Contact Person or to any Signatory to this Agreement using the contact information provided in Attachment C, and via any means of communication listed below in Section 7.9.
- 7.9 Any notice or other communication from the LICENSEE to the NCAOC shall be deemed sufficient if sent to the NCAOC using the contact information below.
- Mail: North Carolina Administrative Office of the Courts  
Financial Services Division  
Attn: Remote Public Access  
Post Office Box 2448  
Raleigh, North Carolina 27602
- Phone: (919) 890-2220
- Fax: (919) 890-1901
- Email: [rpa@nccourts.org](mailto:rpa@nccourts.org)
- 7.10 Unless stated otherwise in this Agreement, all notices between the Parties shall be in writing, and sent by mail, facsimile, or email transmission to the addresses above in Section 7.9.
- 7.11 The LICENSEE expressly acknowledges and agrees that the NCAOC may rely upon any email transmission as an authorized communication from the LICENSEE if the email purports to originate from an email address provided for a Contact Person in Attachment C. The NCAOC is under no obligation to take any action to verify the authenticity of email communications from the LICENSEE, including, but not limited to, investigation of the use of a Contact Person's email account by some other individual or the "spoofing" of a Contact Person's email address such that it appears as the sender of a message not actually originating from that address. The LICENSEE further agrees that the NCAOC may, in its sole discretion, ignore any email communication purporting to be from the LICENSEE or any agent of the LICENSEE, without investigation or notification to the LICENSEE, if said communication originates from an email address other than one provided to the NCAOC and included in Attachment C.
- 7.12 As a convenience to the NCAOC and members of the public, the NCAOC lists on its website ([www.nccourts.org](http://www.nccourts.org)) certain LICENSEES who provide criminal record checks. The LICENSEE will be listed on the NCAOC website only if the LICENSEE requests

listing on its most recently updated copy of Attachment B to this Agreement. The LICENSEE acknowledges that the content of the LICENSEE's listing is within the sole discretion of the NCAOC, and that the NCAOC may discontinue the listing at any time for any reason. The LICENSEE's listing will be removed from the website if the LICENSEE does not access the NCAOC Legacy System or the NCAOC Information System for a contiguous period of three (3) months. Upon termination of this Agreement for any reason, the LICENSEE's listing will be removed from the website.

## **8. LIMITS ON THE NCAOC'S DUTIES**

8.1 The Data provided pursuant to this Agreement are subject to the following limitations:

8.1.1 Data availability is based on the dates the NCAOC Legacy System or the NCAOC Information System was implemented in a particular county; these dates are provided to the LICENSEE once its setup is complete and will be communicated as they are determined by NCAOC administration. In some counties, the clerk of superior court has chosen to enter case Data into the NCAOC Legacy System or the NCAOC Information System from dates prior to that county's implementation of the NCAOC Legacy System or the NCAOC Information System for those counties that Data will be included.

8.1.2 The official custodian of all official court records for each county is the clerk of superior court of that county. The NCAOC is not the official custodian of any Data provided in any record. **THE NCAOC WARRANTS THAT THE DATA ARE ACCURATE REFLECTIONS OF THE DATA IN THE NCAOC LEGACY SYSTEM, THE NCAOC INFORMATION SYSTEM OR THE RPA CLOUD FROM WHICH THEY WERE ACCESSED AND EXTRACTED, BUT DOES NOT WARRANT THE ACCURACY OF THE NCAOC LEGACY SYSTEM, THE NCAOC INFORMATION SYSTEM, OR THE RPA CLOUD THEMSELVES.**

8.1.3 Use of the Data contained in a record may not be classified as a "certified record check." A certified report of a criminal record search of a Person's record in a particular county may be obtained from the clerk of superior court of that county, upon payment of a statutory search fee. There is no statutory requirement that the clerk furnish a certified report of any other kind of record search.

### **8.2 No Warranties.**

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, THE NCAOC MAKES NO WARRANTY WHATSOEVER, OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, TO THE LICENSEE. WITHOUT LIMITATION ON THE GENERALITY OF THE FOREGOING, THE NCAOC SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY DATA PROVIDED PURSUANT TO THIS AGREEMENT, OR WITH RESPECT TO THE DATA IN THE NCAOC LEGACY SYSTEM, THE NCAOC INFORMATION SYSTEM, OR THE RPA CLOUD. THE NCAOC ALSO SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, FOR THE NCAOC INFORMATION SYSTEM, THE RPA CLOUD, THE NCAOC LEGACY SYSTEM, THE TRANSFER METHOD, AND ANY ASSOCIATED MATERIALS PROVIDED HEREUNDER, OR THAT THE DATA ACCESSED ARE ACCURATE, CORRECT, OR COMPLETE.

### **8.3 Limitation of Liability – Access to NCAOC Legacy System or the RPA Cloud.**

- 8.3.1 The NCAOC shall not be liable for any demand or claim, regardless of form of action, for any damages arising from causes beyond the control and without the fault or negligence of the NCAOC.
- 8.3.2 The NCAOC shall not be liable for any demand or claim, regardless of form of action, for any damages resulting from the use by the LICENSEE of the NCAOC Information System, NCAOC Legacy System, the RPA Cloud, the Transfer Method, other materials, or Data provided under this Agreement.
- 8.3.3 The NCAOC shall not be liable for any demand or claim, regardless of form of action, for any damages arising from incorrect or incomplete Data accessed from this service. It is expressly understood by the Parties that it is the LICENSEE's responsibility to verify Data obtained through access to the NCAOC Legacy System, the RPA Cloud, and the Transfer Method with official information reposing at the court of record.
- 8.3.4 If the NCAOC is in a declared state of disaster recovery, the NCAOC shall not be liable for any demand or claim, regardless of form of action, for any damages arising from denial of access or inability to access the NCAOC Legacy System, the NCAOC Information System, the RPA Cloud, or the Transfer Method.
- 8.3.5 The NCAOC shall not be liable for any demand or claim, regardless of form of action, for any damages based upon alteration or modification made by the LICENSEE of the Data supplied hereunder, unless the NCAOC made, directed, or required such modification or alteration.
- 8.3.6 The NCAOC shall not be liable to the LICENSEE or any other Person for any loss, including revenue; profits; time; goodwill; computer time; destruction, damage, or loss of data; or any other indirect, special, or consequential damage that may arise from the use, operation, or modification of the NCAOC Legacy System, NCAOC Information System, the RPA Cloud, the Transfer Method, or the Data.

## **9. TERM AND TERMINATION**

- 9.1 The term of this Agreement shall begin on the date of its execution and shall continue until terminated by either Party pursuant to this Section 9.
- 9.2 If the LICENSEE fails to perform its duties, as specified in this Agreement, or violates any of the terms, obligations, or stipulations of this Agreement, the NCAOC may terminate this Agreement for cause, without prior notice.
- 9.3 Either Party may terminate this Agreement without cause upon giving the other Party thirty (30) calendar days' written notice of its intent to do so. If this Agreement is terminated without cause, the LICENSEE shall be liable only for payment of usage charges and for other services rendered, if any, prior to and on the effective date of termination.
- 9.4 The filing of bankruptcy, whether voluntary or involuntary, or the commencement of any other action or proceeding alleging the insolvency of the LICENSEE, shall immediately

terminate this Agreement. The LICENSEE shall notify the NCAOC immediately upon the filing or commencement of any action alleging insolvency of the LICENSEE.

- 9.5 If the LICENSEE merges with or is acquired, in whole or in part, by another company, or the LICENSEE goes out of business, and the LICENSEE transfers, assigns, delegates, or sells its rights and data under this Agreement to its successor or buyer without the prior written consent of the NCAOC, the NCAOC may terminate this Agreement for cause, without prior notice.
- 9.6 Upon termination of this Agreement for any reason, except if LICENSEE has in effect a **“Non-Governmental Agreement to Access Data Extracts”** with the NCAOC and has obtained current Data Extracts provided by the NCAOC pursuant to such agreement or the LICENSEE has also provided “real-time” query access to its Customers and Subscribers of the Data provided by the NCAOC to the LICENSEE, the LICENSEE shall add the following information to the disclaimer provided to its Customers and Subscribers pursuant to Subsection 3.3.1.8:
- “The information provided is current only through [DISPLAY DATE OF THE LAST UPDATE TO THE LICENSEE’s RECORDS THROUGH ONLINE ACCESS]. Additions, changes, deletions, and updates occurring after that date are not included.”
- 9.7 For as long as the LICENSEE has access to Data or any portion of the NCAOC Legacy System, the RPA Cloud, or the Transfer Method licensed under the terms of this Agreement, the LICENSEE must comply with the terms of this Agreement.
- 9.8 Should the LICENSEE breach a material provision of this Agreement, the NCAOC shall promptly notify the LICENSEE of the breach, and the LICENSEE shall have ten (10) business days from the receipt of the notice to remedy the breach. In the event the LICENSEE fails to remedy the breach within ten (10) business days, and no extension of time to remedy the breach has been granted, the NCAOC may immediately terminate this Agreement for default and disconnect the LICENSEE’s access to the NCAOC Legacy System, the RPA Cloud, or the Transfer Method. PROVIDED, that if the LICENSEE’s default is nonpayment of an invoice within sixty (60) calendar days, the NCAOC may terminate the LICENSEE’s access to the NCAOC Legacy System, the RPA Cloud, or the Transfer Method without further notice and may send the account to collection. Reinstatement of this Agreement will be subject to payment of any arrearages and the reinstatement fee then in effect (*See Attachment A*).
- 9.9 The NCAOC reserves the right to deny access permanently to the LICENSEE when terminated for default, as defined in Section 9.7 above, and for inaccurate provision of data, pursuant to Subsection 5.2.5.
- 9.10 The NCAOC may terminate this Agreement at any time for the convenience of the State.

## 10. GENERAL TERMS AND CONDITIONS

### 10.1 Prior Agreements

As of the Effective Date, this Agreement shall govern all Data accessible to the LICENSEE from the NCAOC Legacy System and the RPA Cloud. This Agreement shall supersede the Parties’ current RPA online access licensing agreement(s), if any, that authorize the LICENSEE’s access to legacy data sent by the NCAOC to the LICENSEE prior to the Effective Date.

## **10.2 Entire Agreement**

This Agreement encompasses the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous discussions and agreements. The Parties hereby acknowledge and represent that the Parties have not relied on any representation or other assurance, except those set out in this Agreement, made by or on behalf of any other Person or entity whatsoever, prior to the execution of this Agreement. Understandings or representations not contained in this Agreement or a written amendment hereto shall not be binding on either Party.

## **10.3 Assignment**

This Agreement and the LICENSEE's rights under this license are personal to it and may not be transferred, assigned, delegated, sublicensed, subcontracted, or sold, whether by merger, acquisition, or going out of business, to another Person without the prior written consent of the NCAOC.

## **10.4 Modification**

No modification, amendment, deletion, or alteration of any of the terms and conditions of this Agreement shall be effective unless it is in writing and signed by both Parties, with the exception of changes in Contact Persons as detailed in Section 7, Attachment B, and Attachment C of this Agreement and periodic fee changes set out in Attachment A.

## **10.5 Counterparts and Signatures**

This Agreement may be executed by facsimile or cryptographic digital signature (e.g., DocuSign), and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument. To the extent signed in handwriting and then delivered by means of electronic transmission in portable document format ("PDF"), this Agreement shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same force and legal effect as an original signature.

## **10.6 Headings**

The table of contents and headings used herein are for reference and convenience only and shall not enter into the interpretation hereof unless otherwise specified herein.

## **10.7 Severability**

If any court of competent jurisdiction shall for any reason hold any section or provision of this Agreement invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions of this Agreement.

## **10.8 Governing Law and Venue**

This Agreement shall be governed by the laws of the State of North Carolina, without giving effect to conflicts of law principles. If a cause of action involving this Agreement is brought by either Party, jurisdiction and venue shall lie in the state or federal courts located in the State of North Carolina, County of Wake.

### **10.9 Conflict of Authority**

If any provision of this Agreement shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to conform to said statute or rule of law.

### **10.10 Other Laws**

To the extent the Data obtained under this Agreement are subject to other laws, statutes, court rules, administrative rules, or regulations, either federal or state, that govern the use of the Data, the provisions of those other laws, statutes, court rules, administrative rules, or regulations, either federal or state, shall apply to the Data.

### **10.11 Indemnification**

The LICENSEE shall defend, indemnify, and hold harmless the State of North Carolina, the NCAOC, and officials, officers, employees, and agents of either of them, from all loss, risk of loss, and damages (including expenses, costs, and attorney fees) sustained or incurred by them or any of them as the result of the assertion of any claim, demand, suit, action, judgment, or execution for damages of any kind and by whomever and whenever made or obtained, that result directly or indirectly from the LICENSEE's performance or lack of performance under this Agreement.

### **10.12 Status of Parties**

The Parties hereto, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one Party shall not be deemed or construed to be the employees or agents of the other Party for any purpose whatsoever.

### **10.13 Waiver**

The failure of either Party to enforce any term of this Agreement will not constitute a waiver of the rights or remedies of either Party to enforce such term or any other term of this Agreement on any other occasion. No term or condition of this Agreement shall be held to be waived, and no breach excused, except by a written instrument signed by the Parties hereto. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.

### **10.14 Survival**

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

### **10.15 Availability of State Funds**

All payments made to the NCAOC by the LICENSEE are deposited by the NCAOC in the Court Information Technology Fund. The performance of the NCAOC's duties under this Agreement is subject to the availability of the monies in that Fund or of other State funds to enable it to perform those duties.

#### **10.16 Legal Authority**

If at any time for any reason the NCAOC concludes, or it is determined by a court of competent jurisdiction, that the NCAOC was without authority to enter into this Agreement, this Agreement will terminate, without further obligation or liability to the LICENSEE by the State of North Carolina, the NCAOC, or any official, officer, employee, or agent of either.

#### **10.17 No Third-Party Rights**

The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only by and between the Parties and shall inure solely to the benefit of the Parties. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement.

#### **10.18 Limitation of Liability – General**

Neither Party shall be liable for personal injury or damage to tangible property except that proximately caused by each Party's respective fault or gross negligence.

(Remainder of this page intentionally left blank)



## 11. SIGNATURES

**IN WITNESS WHEREOF**, intending to be bound hereby and with consideration, this Agreement is executed by the undersigned authorized representatives of each Party, effective as of the last date of execution by the Parties hereto. Each individual signing below warrants that he or she is authorized to execute this Agreement and bind their respective agencies or companies.

### THE NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS

BY: \_\_\_\_\_  
Kesha Howell or designee  
Chief Operations Officer

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

### NAME OF COMPANY

BY: \_\_\_\_\_ (Signature)  
\_\_\_\_\_  
(Print full name here)  
\_\_\_\_\_  
(Title)

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

## ATTACHMENT A

### Online Access Fees – NCAOC Legacy System or RPA Cloud

Cost Item	NCAOC Legacy System and RPA Cloud Cost/Rate
<b>Setup Fee (non-refundable)<sup>1, 2, 3</sup></b>	\$495
<b>Additional User Identifiers (ID) (Each ID fee will include one (1) user ID to access the NCAOC Legacy System and one (1) user ID to access the RPA Cloud via a user interface until the Legacy System is retired.)<sup>4</sup></b>	\$70/ID
<b>Reinstatement of Deleted Legacy User ID or RPA Cloud Service Account or Individual User ID</b>	\$70/ID
<b>Legacy or RPA Cloud Access Transaction Fee</b>	\$.39/transaction
<b>Late Payment Fee (for bill due 30 calendar days or more)</b>	\$75/late payment
<b>Reinstatement upon Termination<sup>2</sup></b>	\$495
<b>Change in Name<sup>5</sup></b>	No charge
<b>Change in Tax ID<sup>6</sup></b>	\$100
<b>Change in Ownership<sup>7</sup></b>	\$495
<b>Performance Bond Fee<sup>8</sup></b>	
<i>Liquidated Damages<sup>2</sup></i>	\$5,000
<i>Cash Bond or Corporate Surety Bond</i>	\$5,000

<sup>1</sup> Includes two (2) user IDs for access to the NCAOC Legacy System and two (2) admin IDs for resetting passwords for the NCAOC Legacy System.

<sup>2</sup> Requires payment with a cashier's check. Liquidated damages and the bond requirement apply after failing to comply with the update and accuracy duties per Section 5.

<sup>3</sup> Includes (1) service account to access the RPA Cloud via an API and two (2) individual user IDs for access to the RPA Cloud via a user interface.

<sup>4</sup> The Legacy System will be retired when the NCAOC's new integrated case management system is fully deployed statewide. Until that time, the Licensee will need to access both the Legacy System and the RPA Cloud to obtain statewide data.

<sup>5</sup> Change in company name or d/b/a name under same ownership. Does **not** include name changes arising from a change in company ownership, partnership, LLP, or LLC. Any change in ownership, partnership, LLP, or LLC requires the execution of a new licensing agreement and payment of a new setup fee.

<sup>6</sup> Does **not** include a change in Tax ID arising from a change in ownership, partnership, LLP, or LLC. Any change in ownership, partnership, LLP, or LLC requires the execution of a new licensing agreement and payment of a new setup fee.

<sup>7</sup> Requires a new licensing agreement and payment with a cashier's check.

<sup>8</sup> The LICENSEE will be responsible for paying one (1) performance bond of \$5000 for access to Legacy Data and RPA Cloud Data. When full implementation occurs and Data for all 100 counties are accessible from the NCAOC Information System and the NCAOC Legacy System ("Full Implementation"), only new LICENSEES accessing the NCAOC Information System and the NCAOC Legacy System post-Full Implementation will be required to pay a performance bond. All existing LICENSEES will be required to complete a new bond form (AOC-A-204) and their existing performance bond will be transferred by the NCAOC to support the LICENSEE's new bond form and this new Agreement. No additional performance bond will be required.

## ATTACHMENT B

## Websites, Subsidiaries, Entities, “Doing Business as” Names, and Other Aliases of Licensee

Please provide a list of all websites, subsidiaries, entities, aliases, or “doing business as” names that will have access to or provide any information obtained from the North Carolina Administrative Office of the Courts (“NCAOC”). Pursuant to Subsection 3.3.1.12 of your Licensing Agreement to Access Data Online (“Agreement”) with the NCAOC, you are required to provide this information and keep it up to date. This form must be returned with your executed Agreement, before access to Data in the NCAOC Legacy System or the NCAOC Information System will be granted. Failure to keep this information up to date may result in termination of your access to the Data in the NCAOC Legacy System, or the NCAOC Information System, as outlined in Subsection 9.2 of your Agreement.

[illegible]

# ATTACHMENT C

## Licensee Contact Information

<b>Instructions:</b> Use this form to provide or update the LICENSEE's contact information and to request additional user identifiers (IDs) for access to the NCAOC Legacy System or the RPA Cloud. Type or print clearly. All fields are required. If you need assistance with this form, contact the NCAOC Remote Public Access Coordinator at (919) 890-2220.		
<b>Licensee Contact Information:</b> (See Subsection 7.1 of the Licensing Agreement To Access Data Online ("Licensing Agreement").)		
Licensee Name:		
Mailing Address:		
Phone #:	Email:	
Fax #:	Licensee's Website URL:	
Federal Tax ID#:	Include Company on NCAOC Website? <input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>Contact Person Information:</b> (See Subsection 7.2 of the Licensing Agreement.)		
	<b>Contact Person #1</b>	<b>Contact Person #2</b>
Contact Full Name:		
Mailing Address:		
Phone #:		
Fax #:		
Email Address:		
<b>Password Administrator Information:</b> (See Subsection 7.4 of the Licensing Agreement.)		
	<b>Password Admin #1</b>	<b>Password Admin #2</b>
Admin Full Name:		
Mother's Maiden Name:		
Social Security Number:	(Last 4 digits only)	(Last 4 digits only)
Phone #:		
Fax #:		
Email Address:		
<b>Additional User IDs:</b> Two (2) generic User IDs are included in the setup fee. Additional user IDs requested are subject to the current Additional User Identifier fee in Attachment A of the Licensing Agreement.		
Number of additional generic User IDs requested:		
<b>Signature:</b> This Attachment will be honored only if signed by a signatory to the LICENSEE's Licensing Agreement or by a Person currently designated pursuant to Section 7 of that Licensing Agreement as a "Contact Person, as that term is defined in the Licensing Agreement, for the LICENSEE.		
Full Name (Type or Print)	Signature	Date
<b>For NCAOC Internal Use Only:</b>		
Password Admin #1 ID:		
Password Admin #2 ID:		
User ID #1:		
User ID #2:		
RPA Cloud Service Account ID		
Additional User IDs:		
Systems Authorized:	<input type="checkbox"/> Civil – NCAOC Legacy System and RPA Cloud	<input type="checkbox"/> Criminal – NCAOC Legacy System and RPA Cloud
Date Request Completed	NCAOC Security Administrator Signature	