Rider to Software License Terms

This rider ("Rider") to the Software License between ATS Group, LLC, a Pennsylvania limited liability company ("Licensor") and the State of Oregon, acting through its Department of Administrated Services, on behalf of the State of Oregon, its agencies as defined in ORS 174.111, its political subdivisions, and ORCPP members ("Licensee") amends and supersedes any provision to the contrary in the Software License ("License"), a copy of which is attached to this Rider as Exhibit A. This Rider and the Software License constitute the entire licensing agreement (collectively "Agreement") between Licensor and Licensee, and merge all prior and contemporaneous communications with respect to the matters described in this Agreement.

Notwithstanding any language in the License to the contrary, Licensor and Licensee agree:

1. **Software.** This Rider pertains to the ATS Group, LLC software and support and related intellectual property, such as Documentation, licensed by Licensor to Licensee under this Agreement and paid for through Licensor's authorized reseller.

    1.1. **License Model.** As stated in your End User Agreement for ATS products, services, and software, for each Authorized User License that You purchase, You may Use the Software or Services for a single employee with appropriate credentials and log-ins.

2. **Effective Date and Term.** This Agreement is effective on the date of software or login credential delivery or when it is fully executed and approved according to applicable laws, rules and regulations, whichever date is later ("Effective Date"). This Agreement continues in effect unless terminated by either party by providing notice in the manner specified in Section 9 of the License or specified in this Rider.

3. **Definitions. The following terms are amended to read:**

    3.1. **Customer means;** the State of Oregon, its agencies as defined in ORS 174.111, its political subdivisions, and ORCPP members

4. **Confidentiality.**

    4.1. Any obligation of Licensee to maintain the confidentiality of Licensor's proprietary information provided to Licensee is conditioned by and subject to Licensee's obligations under the Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.410 to 192.505 which may require disclosure of proprietary information as a "public record" unless exempt under ORS 192.501 or ORS 192.502.

    4.2. Licensor acknowledges that, it and its employees, subcontractors or agents in the course of this Agreement may be exposed to or acquire information that is confidential to Licensee or Licensee's clients. Any information Licensor or its employees or agents receive or acquire relating to Licensee or Licensee's clients in the performance of this Agreement is deemed to be confidential information of Licensee ("Confidential Information"),

    4.3. Licensor shall comply with the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 through 606A.628, to the extent applicable to this Agreement.

5. Indemnification.

5.1. **Limits on Licensee Indemnification.** To the extent Licensee is required under the License to indemnify or hold Licensor harmless against claims brought by third parties against Licensor, Licensee's obligation to indemnify is subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.

5.2. **Licensor Indemnification.** Licensor shall indemnify and hold Licensee, the State of Oregon, and their agents, officials and employees harmless from all third party claims, demands, suits, actions, proceedings, losses, liabilities, damages, awards, and costs (including reasonable attorneys' fees and expenses), which may be brought or made against Licensee, the State of Oregon, or their agents, officials or employees and arising out of or related to any of the following (each, an "indemnifiable loss"):

5.2.1. Personal injury, death or tangible property damage caused by any alleged act, omission, error, fault, mistake or negligence of Licensor, its employees, agents, or representatives in connection with Licensor's performance under or related to the Agreement; and

5.2.2. Any willful or grossly negligent act or omission by Licensor that constitutes a material breach of the Agreement, including any breach of warranty.

5.2.3. Licensee will timely notify Licensor in writing of any action, claim or demand of which Licensee becomes aware and which Licensee reasonably expects to result in an indemnifiable loss. Licensor's obligation under this section does not extend to any indemnifiable loss to the extent caused by: (i) the negligence or willful misconduct of Licensee, the State of Oregon, or their agents, officials or employees; or (ii) Licensee's modification of Licensor's software where the unmodified version of the software would not cause an indemnifiable loss.

6. Defense of Claims.
To the extent Licensor is required under this Agreement to defend Licensee against claims asserted by third parties, Licensee shall reasonably cooperate in good faith, at Licensor's reasonable expense, in the defense of the claim and Licensor shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim, and Licensor shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, Licensee, its officers, employees or agents. Licensee may elect to assume its own defense with an attorney of its own choice and its own expense at any time Licensee determines important governmental interests are at stake. Licensee will promptly provide notice to Licensor of any claim that may result in an obligation on the part of Licensor to defend. Subject to these limitations, Licensor may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of Licensee, which consent must not be unreasonably withheld.

7. **Governing Law; Jurisdiction; Venue.** This Agreement is to be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon. LICENSOR HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THIS COURT, WAIVES ANY OBJECTION TO VENUE IN THESE COURT, AND WAIVES ANY CLAIM THAT THIS COURT IS AN INCONVENIENT FORUM. In no way may this section or any other term of this Agreement be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court.

8. **Attorney Fees.** Except as specified in Section 5.2, neither party to this Agreement is entitled to obtain judgment from the other party for attorney fees incurred in any litigation between the parties or in defense of any claim asserted by a third party.

9. **Access and Audit rights.** Licensor's audit rights in Section 12 of the License are modified to provide:

   9.1. Any audit will take place no more frequently than once per 12 month period, upon not fewer than 30 days' written notice, and during normal business hours and in a manner that does not interfere unreasonably with Licensee's operations. Licensee will provide Licensor or the independent auditor with information reasonably requested in furtherance of the verification. As an alternative, Licensor can request Licensee complete a self-audit questionnaire.

   9.2. If the agreed-upon final audit report reveals that Licensee does not have sufficient licenses to meet its actual use, Licensee will order sufficient license(s) at then-current prices available to State of Oregon agencies under an Oregon software reseller price agreement. Licensee will not pay a penalty. Licensee may at its option purchase maintenance and support.

   9.3. Each party will bear its own costs of any activity conducted pursuant to Section ## of the License.

10. **Dispute Resolution.** Any dispute between the parties under the License that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. Section 10 of the EULA is deleted, and the parties specifically disclaim any right to arbitration of disputes or limits on bringing a cause of action in any time period shorter than allowed under applicable law.

11. **Payment.** Licensee's obligation to pay late charges is subject to ORS 293.462.

12. **Incorporation of Oregon Statutes.** ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.

13. **Termination for Lack of Funding.** Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating

liabilities or monetary obligations of the State of Oregon. Licensee's payment for license fees due after the last calendar day of the current State of Oregon biennium is contingent upon Licensee receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow Licensee, in the exercise of its reasonable administrative discretion, to continue to compensate Licensor. Licensee may immediately terminate this Agreement upon written notice if Licensee fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by Licensee's budget or spending plan and Licensee determines, in its assessment and ranking of the policy objectives explicit or implicit in its budget or spending plan, that it is necessary to terminate this Agreement.

14. **Independent Contractor.** Licensor is at all times an independent contractor and not as an agent, employee, or representative of Licensee. Licensor has no right or authority to incur or create any obligation for or legally bind Licensee in any way. Licensor is not an "officer," "employee" or "agent" of Licensee or any other agency, office, or department of the State of Oregon, as those terms are used in ORS 30.265, and Licensor shall make no representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for in the Contract or authorized in writing by the party to be bound.

15. **Order of Precedence.** In the event of any conflict between the Rider, the License, additional terms referenced in the License, and any terms and conditions published by Licensor on or after the Effective Date of this Agreement and any terms presented to an end user in a 'click wrap' or end user agreement, the conflict will be resolved in that order.

16. **Publicity.** Licensor may disclose the form and existence of this Agreement in advertising, press releases or other materials distributed to prospective customers, but shall not otherwise attempt to obtain publicity from its association with Licensee or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Licensee or the State of Oregon of Licensor's Application Services, without the prior written consent of Licensee.

17. **Counterparts.** This Rider may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together constitute one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.

18. **Tax Compliance.** By executing this Rider, the undersigned certifies under penalty of perjury that Licensor has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state. Licensor shall, for the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that apply to Licensor, to Licensor's property, operations, receipts, or income, or to Licensor's performance of or compensation for any work performed by Licensor; (iii) Any tax provisions imposed by a political subdivision of this state

that apply to Licensor, or to goods, services, or property, whether tangible or intangible, provided by Licensor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

18.1.   This Agreement will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Contract or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

LICENSOR:

By: _Timothy Conley_

As: _Dmitry M Conley_

Date: _5/9/17_

LICENSEE:

The State of Oregon, acting through its Department of Administrative Services

By: _Army Behrelt_

As: _Procurement Manager_

Date: _5/9/17_

Attachments:

Exhibit A – Software License