625 First Street SE

One GreatAmerica Plaza

Cedar Rapids, IA 52401

To: Equipment Vendors considering offering

IT Support services using Collabrance LLC

as a supplier

**Re: IT Support Services Contract with your customers**

We understand that you are considering offering IT support services to your customers and that you will enter into an agreement with Collabrance LLC (an affiliate of GreatAmerica Leasing Corporation) pursuant to which Collabrance LLC will provide certain IT support services to your customers on your behalf.

While we cannot purport to give you legal advice, we understand that you requested that we provide you with an example of an IT support services agreement that you could have your legal counsel review and consider, and possibly use as a starting point, in preparing your end-user agreement.

Accompanying this letter is a draft of an IT Support Services Agreement that we have prepared for informational purposes only. We cannot recommend this form of agreement to you, nor give you legal advice about its use, effect or application in your state or for your particular circumstances. We do not hold ourselves out as legal advisers to you, nor do we hold ourselves out as legal experts in this area of law. We strongly encourage you to seek the advice of your own lawyer(s) in documenting your agreements with your customers.

The GreatAmerica Legal Team

ATTACHMENT

IT Support Services Agreement

This IT Support Services Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_, 20\_\_\_ (the “Agreement”) is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_ corporation, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Provider”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , a \_\_\_\_\_\_\_\_\_\_\_ corporation, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Customer”).

BACKGROUND

Provider desires to offer those certain information technology support services described in Exhibit A attached hereto, as such Exhibit may be changed from time to time by Provider (“IT Support Services”), to Customer in order to assist in the monitoring and maintaining of Customer’s on-premise computer systems and related databases. Customer desires to have Provider perform certain of the IT Support Services for Customer on the terms set forth in this Agreement and the Exhibits attached hereto and made a part hereof (the “Service Package”).

NOW, THEREFORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Provision of Services
	1. Changes to IT Support Services. During the term of this Agreement, Provider may in its discretion from time to time make changes to the offerings included in the IT Support Services, Exhibit A. Provider will notify Customer of any such change in the IT Support Services by sending Customer an addendum to Exhibit A or a substitute Customer Selected Services Form, Exhibit C.
	2. Customer Selected Services Form. The particular IT Support Services which will comprise the Service Package shall be those items designated on the Customer Selected Services Form, substantially in the form attached hereto as Exhibit C, executed by Customer and accepted by Provider. If Customer wants to add additional components to the Service Package, Customer shall submit a revised Customer Selected Service Form to Provider for acceptance. **THIS AGREEMENT IS NON-CANCELLABLE AND NON-REFUNDABLE DURING THE TERM SPECIFIED AND HAS BEEN PRICED ACCORDINGLY.**
	3. Software Licenses. Provider shall acquire, on Customer’s behalf, any software licenses or usage rights necessary for the Customer to utilize any software included in the Service Package. Customer has been provided access to and agrees to be bound by such license agreements.
	4. Remote Access. Customer acknowledges that in order to provide the Service Package, the Provider must have remote access to Customer’s network and computer system. Customer grants Provider remote access to its network and computer system for the full term of this Agreement.
	5. Technology Limitations. The Service Package will be provided on a “best efforts” basis. Customer recognizes that in order for Provider to be able to effectively and efficiently provide the Service Package, Customer’s information technology system must be current and meet certain requirements and specifications (*e.g.* hardware and software may need to be subject to a manufacturer’s/licensor’s warranty and/or maintenance/support agreement).  If during the term of this Agreement, Provider determines that any part of Customer’s system becomes unsupportable or in need of replacement, Provider will promptly notify Customer of the existence of such unsupportable device/program or the device needing replaced.  The cost of the replacement and/or upgrade of obsolete or defective hardware and software is not included in the Service Package.
2. Fees Applicable to Services
	1. Fee Schedule. The initial schedule of fees for the IT Support Services shall be as set forth on the attached Exhibit B. Customer agrees that prior to instituting the IT Services set forth on Exhibit C, Provider will inspect the system to assure it meets requirements and specifications necessary. This system analysis and inspection, or “On-Boarding” Exhibit D, shall be performed at the rate set forth in Exhibit B. If Provider, or a third party designated by Provider, determines upgrades, repairs, and/or modifications are required to the system, Customer agrees to have these services performed at Provider’s, or third party’s, standard fees for such services. If Customer declines to have the necessary services performed to bring the system into compliance, this Agreement may be terminated, and Customer shall only be responsible for the On-Boarding services. Provider reserves the right to modify such fees at any time following thirty (30) days notice of such modification to Customer. Provider shall notify Customer of the occurrence of any such price change by providing Customer a revised Exhibit B. Customer’s continued use of the Service Package following Customer’s receipt of a revised Exhibit B reflecting updated pricing shall constitute Customer’s acceptance of the revised prices.
	2. Invoicing. Provider shall invoice Customer monthly in advance of each month for the fees related to the Service Package. Customer shall pay the amount due, as set forth on each invoice, in full within thirty (30) days of the date of such invoice. Late payments will be subject to interest at the lesser of 1.5% per month or the highest interest rate permitted by law
	3. Remedies for Nonpayment. Customer understands and agrees that if Customer fails to pay any fees when due, Provider reserves the right, upon ten (10) days written notice to Customer, to disable the Service Package, in whole or in part, until such fees are paid in full by Customer. Customer shall indemnify and hold Provider harmless for and against any and all claims, causes of action, expenses, losses, costs or fees incurred by Customer resulting from the suspension of services hereunder.
3. Term of Agreement
	1. Term. This Agreement shall commence on the date indicated herein, and continue for a term of \_\_\_\_ months. Thereafter, unless Customer gives written notice to Provider not renew this Agreement, no more than ninety (90) days and less than sixty (60) days prior to the end of the term, this Agreement shall automatically renew for an additional twelve (12) month period at the then current fees.
	2. Termination for Cause. Except as provided in Paragraph 2 herein, if, at any time during the term of this Agreement, a party (the “Defaulting Party”) shall fail to perform its obligations hereunder, the other party (the “Notifying Party”) shall give the Defaulting Party written notice of such failure to perform. Unless within thirty (30) days from the receipt of such written notice (a) the failure to perform has been cured or (b) the parties mutually agree in writing to a longer period of time to cure such failure to perform, the Notifying Party shall have the right to terminate this Agreement upon notice thereof. If the Notifying Party elects to terminate this Agreement following Defaulting Party’s failure to perform, this Agreement and the rights and obligations of the parties hereunder shall cease and terminate in accordance with the terms hereunder on the date specified in such notice.
	3. Termination by Mutual Consent. This Agreement may be terminated at any time upon mutual written consent of the parties.
	4. No Liability for Termination. Neither party shall be liable to the other party, or any third party, for any compensation, reimbursement, losses, expenses, costs or damages arising from or related to, directly or indirectly, the termination of this Agreement, except for the payment of the fees provided for in Section 2 above. This waiver of liability shall include, but shall not be limited to, the loss of actual or anticipated profits, anticipated or actual sales, and of expenditures, investments or commitments in connection with such party’s or any third-party’s goodwill or business.
	5. Use of Service Package Following Termination. Upon the termination of this Agreement, Customer and each of its employees shall cease using the Service Package, including any related documentation or software, and within ten (10) days after termination return the related documentation or software to Provider or certify to Provider that Customer has destroyed the related documentation or software.
4. Provider Representations
	1. Representations. Provider represents and warrants that the services provided by Provider will be performed by persons having skills and expertise appropriate for the tasks to which such persons are assigned. All on site services shall be performed during Provider’s normal business hours of 8:00 AM to 5:00 PM, Monday through Friday, Provider’s observed Holidays excepted.
	2. Data Loss. At all times Provider shall use reasonable care to ensure the security of data and information exchanged between Customer and Provider (the “Data”). However, the parties acknowledge and agree that the use of the communication technology necessary to provide the Service Package entails numerous risks, and that no technology is foolproof or immune to attack. Accordingly, Customer shall hold Provider harmless from and against any claim, cause of action, loss, expense, cost, fine or fee arising from or related to the unintentional or accidental disclosure, misuse or erasure of the Data, or any breach of security impacting or affecting the Service Package or the Data.
	3. Availability. Provider relies upon the availability of the data center, which hosts the software and maintains the systems necessary to provide the Service Package. Although Provider makes every reasonable effort to ensure maximum data center availability, there is a possibility that the data center may become inaccessible or unavailable as a result of code upgrades, operating system instability, power failures, internet outages or other causes beyond Provider’s control, and Customer shall hold Provider harmless from and against any liability that results from any such events.
	4. Remedies. Unless and to the extent otherwise stated in this Agreement, and except to the extent so specifically stated otherwise, Provider shall not provide, and hereby expressly waives, all representations and warranties including, but not limited to, implied warranties of merchantability and fitness for a particular purpose of the Service Package and Provider’s provision of the Service Package. The Service Package will be provided on an “as is” basis, and Provider does not warrant or represent that the Service Package will meet or satisfy all of Customer’s specific needs. The parties acknowledge and agree that Provider’s sole liability for any breach of any representation or warranty described herein is expressly limited to the fee paid to Provider pursuant to Section 2(b) during the time that such representation was materially incorrect, not to exceed 180 days.
5. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, PROVIDER’S, ITS SUPPLIERS’ AND ITS LICENSORS’ AGGREGATE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT, FOR ANY AND ALL CAUSES OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF CONTRACT, STRICT LIABILITY OR TORT, INCLUDING NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY, INCLUDING A BREACH OF A CONDITION OR FUNDAMENTAL TERM OR FUNDAMENTAL BREACH OR BREACHES) SHALL BE LIMITED TO CUSTOMER’S ACTUAL DIRECT, PROVABLE DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEES PAID BY CUSTOMER TO PROVIDER UNDER THIS AGREEMENT IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. PROVIDER, ITS LICENSORS AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING COSTS OR LEGAL EXPENSES, INCLUDING ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SERVICE PACKAGE PROVIDED PURSUANT TO THIS AGREEMENT, EVEN IF PROVIDER HAS BEEN ADVISED OF OR COULD REASONABLY FORESEE THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT (I) THE PRICES AND OTHER CHARGES CONTEMPLATED UNDER THIS AGREEMENT ARE BASED ON THE LIMITATION OF LIABILITY SPECIFIED HEREIN AND (II) SUCH CHARGES WOULD BE SUBSTANTIALLY HIGHER IF THE LIMITED LIABILITY PROVISION WAS NOT INCLUDED OR WAS UNENFORCEABLE.
6. Non-Hire. During the term of this Agreement and for a period of one (1) year following any termination hereof, Customer shall not, directly or indirectly hire, contract with, solicit, or encourage leaving Provider’s employment, any employee, consultant or contractor of Provider. Violation of this provision shall result in Customer paying Provider one (1) year’s compensation of the individual engaged, plus attorneys fees and costs required to collect said amount.
7. Intellectual Property
	1. Service Package Ownership. As between Provider, Customer and any third party (excluding Provider’s suppliers and licensors), Provider is and shall remain the sole and exclusive owner of any and all intellectual property associated with the Service Package, including any and all trademarks, copyrights, patents, works of authorship and other property rights relating to the Service Package, but excluding software necessary to provide the Service Package which is subject to third-party license agreements (collectively, the “Intellectual Property Rights”). Customer shall not take any action, directly or indirectly, that injures or diminishes, or may tend to injure or diminish, the Intellectual Property Rights, nor shall Customer encourage any third party to do so. Customer agrees to inform Provider immediately of any infringement of any of the Intellectual Property Rights of which Customer may become aware. If a third party asserts, whether or not successfully, that the supplier from whom Provider secured any rights to use any software or other intellectual property associated with the Service Package is infringing on such third party’s intellectual property rights, Provider shall have no obligation or liability to Customer with respect to such claims of infringement.
	2. Prohibitions Relating to Intellectual Property. Customer and Customer’s employees shall not:
		1. reproduce, copy, modify, adapt, enhance, translate, create a competitive or derivative work of, disassemble, decompile, reverse engineer or otherwise attempt to discover the source code of any materials or software used to provide the Service Package, in whole or in part, notwithstanding any law or regulation to the contrary, except to the limited extent that any law or regulation applicable to the circumstances both specifically permits Customer to do any of the foregoing acts and specifically prohibits or nullifies an agreement to the contrary;
		2. re-license, resell, lease, rent, distribute, sub-license, time-share, make a data transmission of, assign, transfer or otherwise share rights to use the materials or software used to provide the Service Package, including without limitation, any use of such materials or software for third party training, commercial time-sharing, rental or service bureau use;
		3. alter or remove any proprietary rights or copyright notice or identification which indicates ownership of the materials or software used to provide the Service Package; or
		4. use the materials or software used to provide the Service Package to process the data of any person, firm, entity or association other than Customer’s own data pursuant to and in accordance with this Agreement.
8. Confidentiality
	1. Confidential Information Defined. Confidential Information shall mean all non-public information concerning a party’s business, including, but not limited to, trade secrets, financial information, technical information, internal procedures, data, designs and know-how and business information including operations, planning, marketing and products.
	2. Provider Use of Confidential Information. Provider and its suppliers shall take all reasonable steps to protect the confidentiality of Customer’s Confidential Information in carrying out Provider’s obligations under this Agreement.
	3. Customer Use of Confidential Information. Customer agrees to, and shall cause its employees to, take all reasonable steps to protect the confidentiality of Provider’s and Provider’s licensors’ and suppliers’ Confidential Information. Customer and its employees will not use such Confidential Information for any purposes other than for the purpose of receiving information technology support services pursuant to the terms of this agreement.
	4. Survival of Obligations. The parties’ obligations under this Section 8 shall survive the termination of this Agreement.
9. Miscellaneous
	1. Status of the Parties. None of the provisions of this Agreement is intended to create, nor shall such provisions be deemed or construed to create, any relationship between the parties hereto other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. The parties are independent contractors to one another, and neither party is an employee, servant, agent or partner of the other party.
	2. Amendment. The terms of this Agreement may be amended, modified or supplemented from time to time provided that such amendment, modification or supplement is in writing and signed by the parties hereto.
	3. Notices. All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing and shall be delivered by hand or overnight courier service, mailed by first-class mail or sent by facsimile to the address for such party set forth in this Agreement or at such other address as shall be designated by such party in a written notice to the other party hereto.
	4. Severability. If one or more of the provisions of this Agreement shall be for any reason held invalid or unenforceable, such provisions shall be deemed severable from the remaining covenants, agreements and provisions of this Agreement and such invalidity or unenforceability shall in no way affect the validity or enforceability of such remaining provisions or the rights of the parties hereto. To the extent permitted by law, the parties hereto waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.
	5. Third Party Beneficiaries. The Provider’s suppliers and licensors are intended third party beneficiaries of this Agreement, particularly with respect to the Limitation of Liability provisions hereof. There shall be no other third party beneficiaries of this Agreement. Force Majeure. Neither party shall be liable for any delay or failure to perform hereunder due to floods, riots, strikes, freight embargoes, acts of God, acts or war or hostilities of any nature, laws or regulations of any government (whether foreign or domestic, federal, state, county or municipal), failures in or unavailability of public or private communication and/or data lines or systems, or any other similar cause beyond the reasonable control of the party affected. A party relying on such an event to excuse its performance hereunder shall, as soon as reasonably possible, notify the other party in writing of the nature of that event and the prospects for that party’s future performance and shall thereafter, while that event continues, respond promptly and fully in writing to all reasonable requests for information from the other party relating to that event and those prospects.
	6. Merger. This Agreement is the sole and complete statement of the obligations and rights of the parties as to all matters covered by this Agreement, and supersedes all previous or contemporaneous understandings, agreements, negotiations and proposals relating thereto. The parties agree that no promises or inducements have been offered or made to Customer (other than those expressly stated in this Agreement) to induce Customer to enter into this Agreement and to be bound by the terms contained herein.
	7. Attorneys’ Fees. If either party commences any action or proceeding against the other party to enforce the terms of this Agreement, the prevailing party, in addition to any award, shall be entitled to all reasonable attorneys’ fees, costs and expenses incurred by such party in connection with such action or proceeding (including any mediation or arbitration, and all levels of trial and appeal), and in connection with the enforcement of any judgment or order thereby obtained.
	8. GOVERNING LAW; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF \_\_\_\_\_\_\_\_\_, WITHOUT REGARD TO THE CONFLICT OF LAW PROVISIONS THEREOF. EACH PARTY HERETO WAIVES THE RIGHT TO TRIAL BY JURY IN ANY CLAIM, ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT. ANY DISPUTE INVOLVING THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER SHALL BE ADJUDICATED IN A STATE OR FEDERAL COURT IN \_\_\_\_\_\_\_\_\_ COUNTY, \_\_\_\_\_\_\_\_\_.
	9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument. Facsimile and Electronic copies shall be considered the same as originals.
	10. Customer has read the Terms and Conditions contained in this Agreement and agrees to be bound thereby.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers hereunto duly authorized as of the day and year first above written.

[CUSTOMER NAME] [VENDOR NAME]

By: By:

Name: Name:

Title: Title:

Notice Address: Notice Address:

 Facsimile: Facsimile:

 Phone: Phone:

Exhibit A

IT Support Services

Exhibit B

Schedule of Fees

Exhibit C

Customer Selected Services Form

Exhibit D

On-Boarding Specifications