

## NON-COLLUSION AFFIDAVIT

State of New Jersey

County of \_\_\_\_\_

ss:

I, \_\_\_\_\_ residing in \_\_\_\_\_  
(name of affiant) (name of municipality)

in the County of \_\_\_\_\_ and State of \_\_\_\_\_ of full age,  
being duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_  
(title or position) (name of firm)

\_\_\_\_\_ the bidder making this Proposal for the bid

entitled \_\_\_\_\_, and that I executed the said proposal with  
(title of bid proposal)

full authority to do so that said bidder has not, directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that the \_\_\_\_\_

\_\_\_\_\_ relies upon the truth of the statements contained in said Proposal  
(name of contracting unit)

and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by \_\_\_\_\_.

Subscribed and sworn to

before me this day

\_\_\_\_\_  
Signature

\_\_\_\_\_, 2 \_\_\_\_\_

\_\_\_\_\_  
(Type or print name of affiant under signature)

\_\_\_\_\_  
Notary public of

My Commission expires \_\_\_\_\_

(Seal)

**AFFIRMATIVE ACTION AFFIDAVIT  
(P.L. 1975, C.127)**

**Company Name:** \_\_\_\_\_

**Street:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Proposal Certification:**

Indicate below company's compliance with New Jersey Affirmative Action regulations. Company's proposal will be accepted even if company is not in compliance at this time. No contract and/or purchase order may be issued, however, until all Affirmative Action requirements are met.

**Required Affirmative Action Evidence:**

Procurement, Professional & Service Contracts (Exhibit A)

**Vendors must submit with proposal:**

1. A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter);

OR

2. A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4;

OR

3. A photocopy of an Employee Information Report (Form AA302) provided by the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

**Public Work – Over \$50,000 Total Project Cost:**

- A. No approved Federal or New Jersey Affirmative Action Plan. We will complete Report Form AA201. A project contract ID number will be assigned to your firm upon receipt of the completed Initial Project Workforce Report (AA201) for this contract.
- B. Approved Federal or New Jersey Plan – certificate enclosed

*I further certify that the statements and information contained herein, are complete and correct to the best of my knowledge and belief.*

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Authorized Signature and Title**

**P.L. 1995, c. 127 (N.J.A.C. 17:27)**  
**MANDATORY AFFIRMATIVE ACTION LANGUAGE**

**PROCUREMENT, PROFESSIONAL AND SERVICE**  
**CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers trade consistent with the applicable county employment goal prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the state of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and lay-off to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

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Signature of Procurement Agent

## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

### Public Agency Instructions

This page provides guidance to public agencies entering into contracts with business entities that are required to file Political Contribution Disclosure forms with the agency. **It is not intended to be provided to contractors.** What follows are instructions on the use of form local units can provide to contractors that are required to disclose political contributions pursuant to N.J.S.A. 19:44A-20.26 (P.L. 2005, c. 271, s.2). Additional information on the process is available in Local Finance Notice 2006-1 ([http://www.nj.gov/dca/divisions/dlgs/resources/lfns\\_2006.html](http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html)). Please refer back to these instructions for the appropriate links, as the Local Finance Notices include links that are no longer operational.

1. The disclosure is required for all contracts in excess of \$17,500 that are **not awarded** pursuant to a “fair and open” process (N.J.S.A. 19:44A-20.7).
2. Due to the potential length of some contractor submissions, the public agency should consider allowing data to be submitted in electronic form (i.e., spreadsheet, pdf file, etc.). Submissions must be kept with the contract documents or in an appropriate computer file and be available for public access. **The form is worded to accept this alternate submission.** The text should be amended if electronic submission will not be allowed.
3. The submission must be **received from the contractor and** on file at least 10 days prior to award of the contract. Resolutions of award should reflect that the disclosure has been received and is on file.
4. The contractor must disclose contributions made to candidate and party committees covering a wide range of public agencies, including all public agencies that have elected officials in the county of the public agency, state legislative positions, and various state entities. The Division of Local Government Services recommends that contractors be provided a list of the affected agencies. This will assist contractors in determining the campaign and political committees of the officials and candidates affected by the disclosure.
  - a. The Division has prepared model disclosure forms for each county. They can be downloaded from the “County PCD Forms” link on the Pay-to-Play web site at <http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#12>. They will be updated from time-to-time as necessary.
  - b. A public agency using these forms **should edit them to properly reflect the correct legislative district(s)**. As the forms are county-based, **they list all legislative districts** in each county. **Districts that do not represent the public agency should be removed from the lists.**
  - c. Some contractors may find it easier to provide a single list that covers all contributions, regardless of the county. These submissions are appropriate and should be accepted.
  - d. The form may be used “as-is”, subject to edits as described herein.
  - e. The “Contractor Instructions” sheet is intended to be provided with the form. It is recommended that the Instructions and the form be printed on the same piece of paper. The form notes that the Instructions are printed on the back of the form; where that is not the case, the text should be edited accordingly.
  - f. The form is a Word document and can be edited to meet local needs, and posted for download on web sites, used as an e-mail attachment, or provided as a printed document.
5. It is recommended that the contractor also complete a “Stockholder Disclosure Certification.” This will assist the local unit in its obligation to ensure that contractor did not make any prohibited contributions to the committees listed on the Business Entity Disclosure Certification in the 12 months prior to the contract (See Local Finance Notice 2006-7 for additional information on this obligation at [http://www.nj.gov/dca/divisions/dlgs/resources/lfns\\_2006.html](http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html)). A sample Certification form is part of this package and the instruction to complete it is included in the Contractor Instructions. NOTE: This section is not applicable to Boards of Education.

## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

### Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a “fair and open” process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee\*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
  - of the public entity awarding the contract
  - of that county in which that public entity is located
  - of another public entity within that county
  - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed \$300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an “interest” ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs).

When the business entity is a natural person, “a contribution by that person’s spouse or child, residing therewith, shall be deemed to be a contribution by the business entity.” [N.J.S.A. 19:44A-20.26(b)] The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor’s responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor’s submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

\* N.J.S.A. 19:44A-3(s): “The term “legislative leadership committee” means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L.1993, c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures.”



**List of Agencies with Elected Officials Required for Political Contribution Disclosure**  
**N.J.S.A. 19:44A-20.26**

**County Name:**

State: Governor, and Legislative Leadership Committees

Legislative District #s:

State Senator and two members of the General Assembly per district.

County:

Freeholders

County Clerk

Sheriff

{County Executive}

Surrogate

Municipalities (Mayor and members of governing body, regardless of title):

**USERS SHOULD CREATE THEIR OWN FORM, OR DOWNLOAD  
FROM THE PAY TO PLAY SECTION OF THE DLGS WEBSITE A  
COUNTY-BASED, CUSTOMIZABLE FORM.**

**STOCKHOLDER DISCLOSURE CERTIFICATION****Name of Business:**

☐ I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

**OR**

☐ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

**Check the box that represents the type of business organization:**☐ Partnership☐ Corporation☐ Sole Proprietorship☐ Limited Partnership☐ Limited Liability Corporation☐ Limited Liability Partnership☐ Subchapter S Corporation**Sign and notarize the form below, and, if necessary, complete the stockholder list below.**Stockholders:

Name:	Name:
Home Address:	Home Address:
Name:	Name:
Home Address:	Home Address:
Name:	Name:
Home Address:	Home Address:

Subscribed and sworn before me this ____ day of _____, 2__.	_____ (Affiant)
(Notary Public)	_____ (Print name & title of affiant)
My Commission expires:	_____ (Corporate Seal)





## DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY  
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

BID SOLICITATION # AND TITLE: \_\_\_\_\_

VENDOR NAME: \_\_\_\_\_

Pursuant to N.J.S.A. 52:32-57, et seq. (P.L. 2012, c.25 and P.L. 2021, c.4) any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must certify that neither the person nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the New Jersey Department of the Treasury's Chapter 25 List as a person or entity engaged in investment activities in Iran. The Chapter 25 list is found on the Division's website at <https://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Vendors/Bidders must review this list prior to completing the below certification. If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

CHECK THE APPROPRIATE BOX

☐ I certify, pursuant to N.J.S.A. 52:32-57, et seq. (P.L. 2012, c.25 and P.L. 2021, c.4), that neither the Vendor/Bidder listed above nor any of its parents, subsidiaries, or affiliates is listed on the New Jersey Department of the Treasury's Chapter 25 List of entities determined to be engaged in prohibited activities in Iran.

**OR**

☐ I am unable to certify as above because the Vendor/Bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the New Jersey Department of the Treasury's Chapter 25 List. I will provide a detailed, accurate and precise description of the activities of the Vendor/Bidder, or one of its parents, subsidiaries or affiliates, has engaged in regarding investment activities in Iran by completing the information requested below.

Entity Engaged in Investment Activities  
Relationship to Vendor/ Bidder  
Description of Activities

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Duration of Engagement  
Anticipated Cessation Date

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*\*Attach Additional Sheets If Necessary.*

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I may be subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

Signature

Date

Print Name and Title



# CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS

Pursuant to N.J.S.A. 52:32-60.1, et seq. ([L. 2022, c. 3](#)) any person or entity (hereinafter "Vendor"<sup>i</sup>) that seeks to enter into or renew a contract with a State agency for the provision of goods or services, or the purchase of bonds or other obligations, must complete the certification below indicating whether or not the Vendor is identified on the Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list, available here: <https://sanctionssearch.ofac.treas.gov/>. If the Department of the Treasury finds that a Vendor has made a certification in violation of the law, it shall take any action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

I, the undersigned, certify that I have read the definition of "Vendor" below, and have reviewed the Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list, and having done so certify:

*(Check the Appropriate Box)*

- A. That the Vendor is not identified on the [OFAC Specially Designated Nationals and Blocked Persons list on account of activity related to Russia and/or Belarus](#).

OR

- B. That I am unable to certify as to "A" above, because the Vendor is identified on the [OFAC Specially Designated Nationals and Blocked Persons list on account of activity related to Russia and/or Belarus](#).

OR

- C. That I am unable to certify as to "A" above, because the Vendor is identified on the [OFAC Specially Designated Nationals and Blocked Persons list](#). However, the Vendor is engaged in activity related to Russia and/or Belarus consistent with federal law, regulation, license or exemption. A detailed description of how the Vendor's activity related to Russia and/or Belarus is consistent with federal law is set forth below.

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*(Attach Additional Sheets If Necessary.)*

Signature of Vendor's Authorized Representative

Date

Print Name and Title of Vendor's Authorized Representative

Vendor's FEIN

Vendor's Name

Vendor's Phone Number

Vendor's Address (Street Address)

Vendor's Fax Number

Vendor's Address (City/State/Zip Code)

Vendor's Email Address

<sup>i</sup> Vendor means: (1) A natural person, corporation, company, limited partnership, limited liability partnership, limited liability company, business association, sole proprietorship, joint venture, partnership, society, trust, or any other nongovernmental entity, organization, or group; (2) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or (3) Any parent, successor, subunit, direct or indirect subsidiary, or any entity under common ownership or control with, any entity described in paragraph (1) or (2). **NJ Rev. 1.22.2024**

**NEW JERSEY BUSINESS REGISTRATION CERTIFICATE  
(N.J.S.A. 52:32-44)**

Offerors wishing to do business in New Jersey must submit their State Division of Revenue issued Business Registration Certificate with their proposal here. Failure to do so will disqualify the Offeror from offering products or services in New Jersey through any resulting contract.

<https://www.njportal.com/DOR/BusinessRegistration/>

**EEOAA EVIDENCE**

Equal Employment Opportunity/ Affirmative Action

Goods, Professional Services & General Service Projects

**EEO/AA Evidence**

Vendors are required to submit evidence of compliance with N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 in order to be considered a responsible vendor.

**One** of the following must be included with submission:

- Copy of Letter of Federal Approval
- Certificate of Employee Information Report
- Fully Executed Form AA302
- Fully Executed EEO-1 Report

See the guidelines at:

[https://www.state.nj.us/treasury/contract\\_compliance/documents/pdf/guidelines/pa.pdf](https://www.state.nj.us/treasury/contract_compliance/documents/pdf/guidelines/pa.pdf) for further information.

I certify that my bid package includes the required evidence per the above list and State website.

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

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



DOC #10  
MACBRIDE-PRINCIPLES

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE  
AND PROPERTY 33 WEST STATE STREET, P.O. BOX 230 TRENTON,  
NEW JERSEY 08625-0230

BID SOLICITATION # AND TITLE: \_\_\_\_\_

VENDOR NAME: \_\_\_\_\_

Pursuant to Public Law 1995, c. 134, a responsible Vendor/Bidder is required to provide a certification in compliance with the MacBride Principles and Northern Ireland Act of 1989. Pursuant to N.J.S.A. 52:34-12.2, Vendor/Bidder must complete the certification below by checking one of the two options listed below and signing where indicated. If a Vendor/Bidder that would otherwise be awarded a purchase, contract or agreement does not complete the certification, then the Director may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the purchase, contract or agreement to another Vendor/ Bidder that has completed the certification and has submitted a bid within five (5) percent of the most advantageous bid. If the Director finds contractors to be in violation of the principles that are the subject of this law, he/she shall take such action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

I, the undersigned, on behalf the Vendor/Bidder, certify pursuant to N.J.S.A. 52:34-12.2 that:

CHECK THE APPROPRIATE BOX

☐

The Vendor/Bidder has no business operations in Northern Ireland; or

OR

☐

The Vendor/Bidder will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in section 2 of P.L. 1987, c. 177 (N.J.S.A. 52:18A-89.5) and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principles.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I may be subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

## Exhibit H

### Advertising Compliance Requirement

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Pursuant to certain state notice provisions, including but not limited to Oregon Revised Statutes Chapter 279A.210, Chapter 279A.220, and other related provisions, the following public agencies and political subdivisions of the referenced public agencies are eligible to register with OMNIA Partners and access the Master Agreement contract award made pursuant to this solicitation, and are hereby given notice of the foregoing request for proposals for purposes of complying with the procedural requirements of said statutes:

Nationwide:

State of Alabama	State of Hawaii	Commonwealth of Massachusetts	State of New Mexico	State of South Dakota
State of Alaska	State of Idaho	State of Michigan	State of New York	State of Tennessee
State of Arizona	State of Illinois	State of Minnesota	State of North Carolina	State of Texas
State of Arkansas	State of Indiana	State of Mississippi	State of North Dakota	State of Utah
State of California	State of Iowa	State of Missouri	State of Ohio	State of Vermont
State of Colorado	State of Kansas	State of Montana	State of Oklahoma	Commonwealth of Virginia
State of Connecticut	Commonwealth of Kentucky	State of Nebraska	State of Oregon	State of Washington
State of Delaware	State of Louisiana	State of Nevada	Commonwealth of Pennsylvania	State of West Virginia
State of Florida	State of Maine	State of New Hampshire	State of Rhode Island	State of Wisconsin
State of Georgia	State of Maryland	State of New Jersey	State of South Carolina	State of Wyoming
District of Columbia	U.S. Territories			

Lists of political subdivisions and local governments in the above referenced states, districts, and territories may be found at <http://www.usa.gov/state-governments> and <https://www.usa.gov/local-governments>.

Certain Public Agencies and Political Subdivisions:

## Master Agreement

Owner: Cobb County Board of Commissioners  
100 Cherokee Street  
Marietta, GA 30090

Contractor: <Legal Name of Contractor>  
<Contractor Address>  
<Contractor Address>

Description: This Master Agreement for <Name of Procurement> incorporates by reference the following:

Exhibit "A" Owner's Request for Proposal #<Proposal Number>;

Exhibit "B" Contractor's Bid/Proposal submitted on \_\_\_\_\_;

<Exhibit "B-1" Modifications to Exhibit "B"> (if applicable)

Exhibit "C" Cobb County Required Terms (required for any products or services used by Cobb County)

The following provisions of Exhibit "A" Owner's Request for Proposal #<Proposal Number>, as modified by Exhibit "B" Contractor's Bid/Proposal and <Exhibit "B-1" Modifications to Exhibit "B,"> shall be incorporated by reference herein and shall be deemed to have the same force and effect as if set forth in full herein: <Section 3.0, Section 3.1, and Section 7.0 of the Solicitation; Sections IX, XIV, XVI, XVII, XXVIII, XXIX, XXXII, XXXIII, and XXXIX of Cobb County General Instructions for Proposers, Terms and Conditions.>

Purchasing Cooperative: OMNIA PARTNERS PURCHASING COOPERATIVE: Contractor agrees to extend use of this Master Agreement to public agencies (state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit) ("Public Agencies") registered with OMNIA Partner, LLC's Purchasing Cooperative ("Participating Public Agencies") under the terms of this Agreement ("Master Agreement") and the Master Intergovernmental Cooperative Purchasing Agreement found at Exhibit D of Exhibit "A" Owner's Request for Proposal #<Proposal Number>.

Governing Law: This Agreement shall be governed by the laws of the State of Georgia. As to any dispute hereunder, venue shall be in the Superior Court of Cobb County, Georgia.

Term: This Agreement shall begin on \_\_\_\_\_ (Effective Date), for an Initial Term of <four (4)> years. Owner shall have the option to renew this Agreement for <three (3) additional twelve (12)> month periods (Renewal Terms) upon

mutual written consent of the Parties. This Agreement shall terminate absolutely on [REDACTED], unless earlier terminated as provided herein. Pursuant to O.C.G.A. § 36-60-13, this Agreement shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which the Agreement is in effect. Unless Owner provides at least 30 days' written notice of an intention not to renew, the Agreement shall automatically be renewed for consecutive one-year terms until the conclusion of the Initial Term or any Renewal Term in effect. The Parties reserve the right to renew, amend or extend the Agreement for additional terms. Owner may terminate this agreement at any time for nonappropriation of funding.

Price: Prices for services and equipment, if applicable, shall be as stated in Exhibit "B" Contractor's Bid/Proposal.

Billing: For purchases made by Owner pursuant to this Agreement, all original invoices shall be submitted directly to the Cobb County Finance Department. Invoices shall bill only for items received during the period covered by the invoice and shall clearly identify such items in accordance with invoicing guidelines in Exhibit "B" Contractor's Bid/Proposal. For purchases made by Participating Public Agencies, the Contractor shall comply with each Participating Public Agencies' invoicing and billing requirements outlined on the applicable order.

[Signatures on Next Page]



IN WITNESS, WHEREOF, this Agreement has been executed by Owner and accepted by Contractor to be effective as of the date first above written.

OWNER	CONTRACTOR
Cobb County Board of Commissioners	<Legal Name of Contractor>
100 Cherokee Street	<Contractor Address>
Marietta, Georgia 30090	<Contractor Address>
Lisa N. Cupid, Chairwoman	<Authorized Signatory, Title>
Cobb County Board of Commissioners	<Legal Name of Contractor>
Date	Date
Approved as to form:	Attest:
County Attorney's Office	Corporate Secretary
	Corporate Seal
Date	
	Federal Tax ID Number

Exhibit “A”

Owner’s Request for Proposal #Proposal Number

Exhibit “B”  
Contractor’s Bid/Proposal

Exhibit “B-1”  
Modifications to Exhibit “B”  
(if applicable)

Exhibit “B” Contractor’s Bid/Proposal contained certain exceptions to the requirements of Exhibit “A” Owner’s Request for Proposal #**Proposal Number**. Some of the exceptions are accepted and others are not. Language that is struck through is not accepted. The remainder is accepted with the additional language that is underlined:

## Exhibit “C”

### COBB COUNTY

#### REQUIRED TERMS AND CONDITIONS

These Required Terms and Conditions are hereby agreed to, made and entered into by and between Cobb County, a political subdivision of the State of Georgia, (hereinafter “Cobb County” or “County”), and Vendor Name, a [state] [Choose an item.], located at Vendor address (hereinafter “Vendor” or “Contractor” or “Company”). These Required Terms and Conditions shall be made an exhibit to the Master Agreement between Cobb County and Vendor Name. (“Contract” or “Agreement”) and shall have the same force and effect as the terms and provisions in the Contract. County and Vendor may be referred to individually as “Party,” or collectively, as “Parties.” The Effective Date of this Contract shall be the date that the last party hereto executes the same (the “Effective Date”).

[It is understood by the Parties that Vendor has engaged the following subcontractor(s) to perform Work under this agreement for County:

It is understood by the Parties that no subcontractors are engaged to perform Work under this agreement.]

#### I. Agreement

A. Entire Agreement. This Agreement, together with all addenda, attachments, and exhibits listed below and incorporated herein by reference, represents the sole and entire agreement between the parties named herein and supersedes all previous or prior agreements, understandings, representations or commitments between the parties and their respective officials, officers, directors, contractors, employees and/or representatives. No oral promises, conditions, representations, understandings, interpretations, or terms of any kind are in effect between the parties or have been offered as an inducement for either party to execute this document.

1. Required Terms and Conditions dated mm/dd/yyyy
2. Master Agreement between County and Vendor dated mm/dd/yyyy
3. Exhibit “1” Invitation to Bid or Request for Proposal (ITB/RFP) #
4. Exhibit “2” Vendor’s Bid or Proposal dated mm/dd/yyyy
5. Exhibit “3” Vendor’s Price Quote #xxxx dated mm/dd/yyyy
6. Exhibit “4” Vendor’s Statement of Work (SOW)# dated mm/dd/yyyy
7. Exhibit “4-A” Project Schedule
8. Exhibit “5” Vendor’s End User License Agreement (EULA), License, Software dated mm/dd/yyyy
9. Exhibit “6” Vendor’s Maintenance or Support Agreement dated mm/dd/yyyy
10. Exhibit “7” Vendor’s Service Level Agreement (SLA)
11. Exhibit “8” Third Party Terms and Conditions
12. Exhibit “9” Information Security

13. **Exhibit “10-A” Change Control Definitions and Process**
  14. **Exhibit “10-B” Change Order Form**
  15. **Exhibit “11-A” Contractor Affidavit and Agreement**
  16. **Exhibit “11-B” Subcontractor Affidavit and Agreement**
  17. **Exhibit “11-C” Immigration Compliance Certification**
  18. **Exhibit “12” Conflict of Interest Affidavit**
- B. These Required Terms and Conditions shall apply to and supersede any additional terms and conditions contained in any purchase order, task order, invoice, delivery receipt, or other document issued by Vendor in conjunction with the services or products provided pursuant to this Agreement.
- C. Order of Precedence. In the case of any inconsistency, conflict, ambiguity among the contract documents, the documents shall govern in the following order: (1) Required Terms and Conditions; (2) **Exhibit “3” Vendor’s Price Quote**; and (3) any other applicable documents.
- D. Invalid Terms.
1. Notwithstanding anything else in this Agreement, including any exhibits, attachments or links provided therein, no term shall be valid that:
    - a) Requires the County to:
      - i. Defend, indemnify, or hold harmless another person or entity; or
      - ii. Be bound by terms and conditions that are unknown at the time of signing such contract or that may be unilaterally changed by the other party; or
      - iii. Waive damages; or
      - iv. Release Vendor or third parties from liability; or
      - v. Assume all risk.
      - vi. Pay late payment fees, penalties, interest, attorneys’ fees, liquidated damages, or any other fee that would constitute an illegal gratuity under Georgia law; or
    - b) Provides for:
      - i. A venue for any action or dispute other than a court of competent jurisdiction in Cobb County, Georgia; or
      - ii. The contract to be construed in accordance with the laws of a state other than the State of Georgia; or
      - iii. Binding arbitration or binding mediation; or
      - iv. Renewal beyond the Term; or
      - v. An automatic renewal such that County funds are or would be obligated in subsequent fiscal years; or
    - c) Is inconsistent with the provisions of O.C.G.A. § 50-18-70 et seq., relating to open records.

2. If Agreement, including any exhibits, attachments or links provided therein, contains a term prohibited under this section, such term shall be void, and the Agreement shall be otherwise enforceable as if it did not contain such term.
3. Neither the County nor any agency or department thereof shall be bound by any other new terms and conditions included in any exhibits, orders, invoices, attachments, links, or other document, physical or electronic, which attempt to impose any condition in variance of or in addition to the terms and conditions contain in this Agreement.

## **II. Scope of Work**

Subject to the terms and conditions herein, the term “Services” or “Project” or “Work” means all of the work, product, services, goods, software, licenses, material, equipment, and labor to be provided and performed and completed by Vendor under and as reflected in the Contract, including any and all addendums, exhibits, attachments, appendices, and schedules thereto, and all work reasonably inferable from the specific descriptions. These Required Terms and Conditions shall be an addendum and/or exhibit to the Contract and shall have the same force and effect as the terms and provisions in the Contract.

## **III. Compensation/Consideration**

- A. The total amount payable by Cobb County shall not exceed the maximum amount of \$\_\_\_\_\_ (“Price”).

[Or for multi-year:]

Year 1	FY 20yy	(mm/dd/yyyy – mm/dd/yyyy)	Price:	\$xxx.xx
Year 2	FY 20yy	(mm/dd/yyyy – mm/dd/yyyy)	Price:	\$xxx.xx
Year 3	FY 20yy	(mm/dd/yyyy – mm/dd/yyyy)	Price:	\$xxx.xx
Year 4	FY 20yy	(mm/dd/yyyy – mm/dd/yyyy)	Price:	\$xxx.xx
Year 5	FY 20yy	(mm/dd/yyyy – mm/dd/yyyy)	Price:	\$xxx.xx

- B. As a political subdivision of the State of Georgia, County is exempt from paying most types of taxes and will only pay those taxes it is required to pay under the laws of the State of Georgia or federal law.
- C. County shall timely process payment to Vendor. Vendor shall not charge interest or assess payment penalties against County.
- D. In the event of a dispute about payment/invoicing, County shall deliver a written statement to Vendor no later than [redacted] days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. The parties shall seek to resolve all such disputes expeditiously and in good faith. Vendor shall continue performing its obligations under the Agreement notwithstanding any such dispute.

## **IV. Term of Agreement**

- A. Term. The Initial Term of this Agreement shall begin on the Effective Date and continue for **twelve (12)** months (“Initial Term”). This Agreement may be renewed as herein provided for

up to a total of ( ) months ("Full Term").

- B. Renewal. This Agreement shall automatically renew annually after Initial Term for twelve (12) months on the Effective Date for each subsequent year for a maximum of ( ) renewal years unless County provides at least thirty (30) days written notice of an intention not to renew before the expiration of the then-current annual period. This Agreement shall terminate absolutely after ( ) months. The Parties reserve the right to renew, extend, or amend this Agreement.
- C. Termination. This Agreement may be terminated in the methods listed below. If this contract is terminated, County shall be liable only for goods or services delivered or accepted.
1. For Convenience. County may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice to Vendor. The effective date of termination shall be set forth in the notice. As the sole remedy for County's termination for convenience, Vendor shall be paid for any validated services performed under this Agreement up to the time of termination. Vendor shall not incur new obligations upon receipt of such notice and shall cancel as many outstanding obligations as possible.
  2. For Cause. Either Party may terminate this Agreement for cause should the other Party default in the performance of any of the terms, covenants, obligations, or conditions of this Agreement upon thirty (30) days written notice to the defaulting party to cure the default.
    - a) Cause for termination by the County shall include, but not be limited to, Vendor's breach of a material provision of the Agreement, failure to complete a deliverable or milestone in a timely manner, and/or failure to dedicate adequate and qualified staff to complete the Work. Failure of Vendor to cure such breach or failure within thirty (30) days shall entitle County to a refund of all compensation paid to Vendor.
    - b) Should the Vendor terminate this Agreement for default in performance that is not cured in a timely manner, the County shall be liable for no more than the amount of goods or services delivered or accepted by County up to the date of termination.
  3. By Statute. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed to terminate absolutely and without further obligation on the part of County at the close (December 31) of the calendar year of its execution ("Initial Expiration Date") and at the close (December 31) of each succeeding year for which it may be renewed, unless otherwise expired, earlier terminated, or renewed all as provided in this Agreement. Notwithstanding this provision, as permitted by statute, this Agreement may automatically be renewed and extended for consecutive up to one-year periods beyond the Initial Expiration Date until the expiration of the Full Term, unless County notifies Vendor in writing of its intent not to extend this Agreement at least thirty (30) days prior to the date of termination set forth in such notice, or, for any one-year renewal term subsequent to the Initial Expiration Date, at least thirty (30) days prior to the expiration of the then-current annual period.
  4. Non-appropriation. In compliance with the terms of O.C.G.A. § 36-60-13, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of County. This Agreement does not create a debt of County for the payment of any sum beyond the



calendar year of execution or in the event of renewal, beyond the calendar year of such renewal.

- D. Survival. Notwithstanding the stated term, those provisions that expressly state that they survive, or that would by necessity survive, the expiration or earlier termination of this agreement shall so survive. Furthermore, the provisions pertaining to Confidentiality, Open Records, Record Retention, Indemnification, Preservation of Immunities, No Personal Liabilities, Governing Law, Venue, and Invalid Terms shall survive termination or expiration of this Agreement.

## **V. System Access, Licenses, and Warranties**

- A. This Contract is a Subscription-Based Information Technology Arrangement (SBITA). It is a contract that conveys control of the right to access and use IT software for authorized purposes alone or in combination with tangible capital assets (underlying IT assets) for a period of time in an exchange or exchange-like transaction.

- B. License Grant. Vendor hereby grants to Cobb County a worldwide nonexclusive, nontransferable revocable license to access, use and publicly display the online portion of the Project, as defined in Section 1.1.3.1 below, and a nonexclusive, nontransferable revocable license to distribute to the users the Project (the "License") during the term of this Agreement.

Vendor also grants to Cobb County a nonexclusive right to advertise, market and promote the Project to its clients and the Users during the term of this Agreement. The License expressly excludes all other rights, including, without limitation, the right to modify or create derivative works of the Project or the right to grant any other sublicensing rights to third parties. The License is revocable under the circumstances and on the terms set forth in this Agreement.

- C. Vendor agrees to provide a list and description of all software and licenses required or necessary for the use of such software, to include any continued use or maintenance contemplated by the Contract.

### **D. Warranties**

1. General. Vendor hereby expressly warrants that the Work to be performed hereunder shall be performed in a workmanlike manner, that all Work assigned shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Work is provided and as required under the terms of the Contract. Vendor warrants to County that all Services or Goods furnished in connection with Services shall: (a) be new and free from any defects in workmanship, material, and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; and (d) be free and clear of all liens, security interests or other encumbrances.
2. Performance. For the greater of 12 months or the period during which County purchases support services, the software shall materially conform to the requirements of this Agreement, including any statements of work, and, to the extent not inconsistent with the foregoing, the documentation. Further the software shall remain free from material programming errors and defects in workmanship and materials. If material programming

errors are discovered, Vendor shall promptly remedy such errors at no additional expense to County.

3. Infringement. To the best of Vendor's knowledge, as of the Effective Date, Customer's licensed use of the software will not infringe upon or misappropriate the intellectual property rights of any third party.
4. Service. The services shall be performed in (a) material accordance with this Agreement, (b) a timely and workmanlike manner, and (c) accordance with industry best practices for services of this kind.
5. Legal Compliance. Vendor shall comply and ensure that its software and services comply with all applicable laws and regulations. Vendor shall, at no additional charge, promptly furnish all updates to the software necessary for compliance with any change in laws or regulation during the term of this Agreement.
6. Privacy. Vendor represents and warrants that, at all times during and after the term of this Agreement, it will comply, at its sole expense, with all applicable local, state, federal, and international privacy, confidentiality, consumer protection, advertising, electronic mail, data security, data destruction, and other similar laws, rules and regulations, whether in effect now or in the future, including, but not limited to the Goldenhar Gramm-Leach Bliley Act and its implementing regulations (all of the foregoing to be collectively referred to as the "Privacy and Security Requirements"). Vendor acknowledges that it alone is responsible for identifying, understanding, and complying with its obligations under the privacy and Security Requirements as they apply to its performance of this Agreement and possession of personal information.
7. Anti-Virus. Vendor has taken every commercially reasonable precaution to ensure and to the best of Vendor's knowledge, the software does not contain any virus or similar code that may destroy, modify, alter, or cause the destruction, modification or alteration, in whole or in part, of any of County's data, equipment, devices, networks, or software. Further, Vendor warrants: (a) that its software and/or systems are not dependent on obsolete software, including anything with a known vulnerability; (b) that all critical updates to the software and/or systems have or shall be applied as identified or as needed; and (c) that Vendor's software and/or system have the means to receive such critical updates.
8. Offshoring of Data. All services shall be performed and rendered within the continental United States. Vendor shall not transmit or make available any customer Confidential Information, including personal data, to any entity or individual outside of the continental United States.
9. Open Source and Third Party Software. Vendor represents and warrants that is shall not deliver to County any third party software, including open source software, that would require County to accept and be bound by any third party terms and conditions unless such terms and conditions are expressly identified in and attached to this Agreement as **Exhibit "8" Third Party Terms and Conditions** and to the extent that such terms and conditions are consistent with the Invalid Terms provisions of this Agreement. Except as provided in **Exhibit "8" Third Party Terms and Conditions** as amended by the Invalid Terms

provision of this Agreement, County hereby rejects all such third party terms and conditions.

10. Pass Through Warranties. Vendor shall assign and pass-through to County all representations, warranties, and indemnities to Vendor in its contracts with their party licensors and suppliers relating to the software.
11. Known Performance Issues. There is no existing pattern or repetition of customer complaints regarding the software, including functionality or performance issues. Further, Vendor's engineers have not currently identified any repeating adverse impact on the software, including functionality or performance, for which the root cause is believed to be a flaw or defect in the software.
12. Authority.
  - a) Vendor has full power, capacity, and authority to enter into and perform this Agreement and to make the grant of rights contained herein, including without limitation, the right to license any ancillary or third party programs licensed to County under this Agreement.
  - b) Vendor has all licenses and intellectual property rights necessary to install and produce customizations, enhancements, updates, and/or corrections to the software used in performance of and as required under this Agreement in accordance with industry standards and in a professional and workmanlike fashion.
  - c) Vendor's performance of this Agreement does not violate or conflict with any agreement to which Vendor is a party.
  - d) Vendor represents that there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement.
- E. Changes in Functionality. Vendor shall not modify or change the software to reflect a material diminution in the form, features or functionality of the software from that existing as of the Effective Date. Accordingly, Vendor shall not change the form, features, or functionality of the software in any material adverse manner from that originally licensed under this Agreement.
- F. Documentation. The documentation provided by Vendor shall be complete and accurate so as to enable a reasonably skilled user to effectively use all of the software's features and functions without assistance from the Vendor. Further, on each date that the Vendor delivers documentation to County, such documentation shall be Vendor's most current version thereof.
- G. These warranties survive any delivery, inspection, acceptance, payment, or termination of the Contract. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of County's discovery of the noncompliance. If County gives Vendor notice of noncompliance, Vendor shall, at its own cost and expense, promptly replace or repair nonconforming Goods or Services. This paragraph shall be construed as being in addition to any warranty provision in the Contract.

## **XI. Ownership of Work**

- A. County Ownership. All reports, designs, drawings, plans, specifications, schedules, work product, and other materials, including those in electronic form, prepared or in the process of being prepared for the Work to be performed by Vendor ("Materials") not otherwise created

in the course of business for Vendor's broader customer base shall be the property of County, and County shall be entitled to full access and copies of all such Materials in the form prescribed by County. Any such Materials remaining in the hands of Vendor or subcontractor upon completion or termination of the Work shall be delivered immediately to County; provided that Vendor may retain a copy of any deliverables for its records. Vendor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged, or destroyed before final delivery to County, Vendor shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to County, and Vendor agrees to execute any additional documents that may be necessary to evidence such assignment.

To the extent allowed by law, Cobb County shall retain all right, title and interest in and to any and all patent, copyright, trademark, trade secret, domain name registrations, websites, and other intellectual property rights, throughout the world, and all registrations and applications thereon ("Intellectual Property Rights") in and to (i) Cobb County's governmental and trade names, logos, trademarks, service marks and similar identifying material ("Cobb County Marks") and (ii) the websites directly or indirectly owned, operated or maintained by Cobb County, and (iii) all information owned, managed or developed by Cobb County.

- B. Vendor Ownership Rights. To the extent allowed by law, Vendor shall retain all right, title and interest in and to any and all Intellectual Property Rights in and to the (i) its Work (with the exception of Intellectual Property Rights owned by Cobb County contained therein), (ii) Describe as needed, (iii) any developed or licensed documentation, and all modifications thereto and derivative works thereof, and (iv) all information owned, managed or developed by Vendor.
- C. User Data. As between the parties, all right, title and interest in and to the data in the Work that is entered by, created for or existing about users, Cobb County and its clients and vendors during the Term ("User Data") shall be owned by Cobb County with full rights to use, market and license others to use such User Data only in compliance with applicable laws.

## **XI. Staff Assigned to Project**

- A. Staff. Vendor shall maintain at all times, until the completion of the Project, experienced technical/implementation staff, in adequate numbers and with necessary skillset, functions and responsibilities satisfactory to County; and ensure that staff carries out the following duties: (i) preparation and execution of the plan of activities proposed for project implementation, pursuant to the provisions of **Exhibit "4" Vendor's Statement of Work**; and (ii) proper testing prior to milestone, deliverable or solution turnover to County staff.
- B. Staff Replacement. County and Vendor agree to act in good faith to complete this project and work toward mutual resolutions. In the event that the County has an issue with an individual on the project, County shall have the right to require the removal and replacement of Vendor's technical/implementation staff member(s) from providing services to County under this Contract. County shall notify Vendor in writing of such action. Vendor shall accomplish the removal and replacement within five (5) business days after written notice to Vendor. County shall review and approve the appointment of the replacement staff. Said approval shall not be unreasonably withheld. County is not required to provide any additional information, reason

or rationale in the event it requires the removal of Vendor's staff from providing further services under the Contract.

- C. Staff Transition. If it is known that a member of the Vendor project team will be leaving the project, a replacement will be chosen to join the team, and become familiar with the project before the original team member leaves, to ensure that the transition-in will be seamless. If a member of the Vendor project team leaves unannounced, prompt replacement shall be made in accordance with this Section.

## **XII. Indemnification**

The following obligations to indemnify the Indemnified Party(ies) shall survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

- A. Indemnification of County. Vendor covenants and agrees to take and assume all responsibility for the software and services ("Work") rendered in connection with this Agreement. Vendor shall bear all losses and damages directly or indirectly resulting to it and/or County on account of the performance or character of the Work rendered pursuant to this Agreement. To the fullest extent permitted by law, Vendor shall defend, indemnify and hold harmless County and County's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (individually an "Indemnified Party" and collectively "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of alleged willful, negligent or tortious conduct arising out of the Work, performance of contracted services, or operations by Vendor, any subcontractor, anyone directly or indirectly employed by Vendor or subcontractor or anyone for whose acts Vendor or subcontractor may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.
- B. In any and all claims against an Indemnified Party, by any employee of Vendor, its subcontractor, anyone directly or indirectly employed by Vendor or subcontractor or anyone for whose acts Vendor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Vendor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement and applies notwithstanding any contrary provision.
- C. Intellectual Property Indemnification. Vendor shall hold County, its agents, officers, or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of this Agreement, for which Vendor is not the patentee, assignee, licensee, or other lawful user.

- D. Environmental Indemnification. Vendor agrees to indemnify, defend, and hold harmless an Indemnified Party, to the fullest extent allowed under O.C.G.A. § 13-8-2, from and against all claims, suits, actions, judgments, forfeitures, damages, losses, costs, demands, or expenses and liability, of whatever kind or nature, contingent or otherwise, known or unknown, incurred under, or imposed by, any provision of federal, state or local law or regulation, common law, or in equity, including but not limited to all administrative claims, claims for injunctive relief, claims for property damage, natural resources damages, nuisance claims, bodily injury claims (including death), environmental response, remediation, abatement, detoxification, cleanup costs, removal or disposal of, or otherwise with respect to, hazardous or potentially hazardous substances, fines, penalties, and expenses (including without limitation attorney fees, consultant fees, expert fees, costs, and expenses incurred in investigating and defending against the assertion of such liabilities) that may arise from or be the result of any alleged willful, negligent or tortious conduct of that in any way may arise from, be the result of, or relate to any act or omission of Vendor, or anyone directly or indirectly employed by or otherwise in any way acting on behalf of Vendor, in its performance of the Agreement, the operation of the Facility, or failure to operate the Facility other than in accordance with this Agreement or Applicable Law, regardless of whether or not the negligent act is caused in part by an Indemnified Party. This indemnity obligation shall run from the time of initial discovery of any such potentially adverse environmental condition and shall not be construed to commence only upon realization of an actual economic loss resulting from such condition. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party or any other act, liability, or obligation in any way prohibited by O.C.G.A. § 13-8-2. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. Notwithstanding anything herein to the contrary, this indemnification provision shall survive the termination of the Agreement.

### **XIII. Insurance**

- A. Requirement: Vendor shall procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the Work hereunder by the Vendor, its agents, representatives, employees, or subcontractors.
- B. Minimum Limits of Insurance: During the term of this Agreement, Contactor shall maintain insurance policies with coverage and limits no less than:
1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage for premises/operations, products/completed operations, independent contractors and contractual liability (specifically covering the indemnity), broad-form property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using umbrella policy. The policy or policies must be on “an occurrence” basis (“claims made” coverage is not acceptable).
  2. Commercial Automobile Liability (owned, non-owned and hired): \$1,000,000 combined single limit per occurrence and for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of Georgia and Employers Liability of \$1,000,000 per occurrence or disease.
4. Professional Liability, Technology Errors and Omissions, and Cyber Insurance Coverage: \$2,000,000 per claim and \$4,000,000 in the aggregate is required, in the event that Vendor is performing design, engineering, or other professional services.
5. Professional Liability (Errors and Omissions) and Coverage: \$2,000,000 per claim and \$4,000,000 in the aggregate. Vendor shall maintain Technology Errors and Omissions Insurance, which must include coverage Multimedia Liability, Privacy Liability, Network Security Liability, Breach Costs Coverage (including Notification, Credit Monitoring, Forensics, Public Relations), and Regulatory Fines and Penalties assessed due to a Data (Privacy) Breach.
  - a) Technology Errors and Omissions insurance must cover liabilities, punitive damages, and claim expenses arising from errors, omissions, or negligent acts in rendering or failing to render (1) all services promised, including but not limited to computer or information technology services, (2) products that perform the intended function or serve the intended purpose, and (3) violation of software copyright.
  - b) Services insured, at a minimum, must include (1) systems analysis, (2) systems programming, (3) data processing, (4) systems integration, (5) outsourcing including outsourcing development and design, (6) systems design, consulting, development and modification, (7) training services relating to computer software or hardware, (8) management, repair, and maintenance of computer products, networks, and systems, (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software, (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and (11) any other services provided by the vendor.
  - c) Vendor shall maintain Privacy, Security, and Technology Insurance.
    - i. Vendor's policy must include coverage for (1) loss, disclosure, and theft of data in any form; (2) media and content rights infringement and liability (excluding patents and trade secrets), including but not limited to, software copyright infringement; and (3) network security failure, including but not limited to, denial of service attacks and transmission of malicious code.
    - ii. The insurance coverage must include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services, and any other causally-related crisis management expense for up to one (1) year.
    - iii. The insurance coverage must also contain severability for the insured organization for any intentional act exclusions.
    - iv. If the coverage is provided on a claims-made basis, then it must be maintained for a period of two (2) years after acceptance of the deliverables and/or services provided in connection with this Agreement.

- v. Additionally, such policy must cover consequential or vicarious liabilities (e.g., claims brought against the Vendor or its Affiliated Companies and their respective directors, officers, and employees due to the wrongful acts and failures committed by you) and direct losses (e.g., claims made by the Vendor and its Affiliated Companies and their respective directors, officers, and employees against you for financial loss due to your wrongful acts or failures).
- d) Builder's "All Risk" Insurance: In the event Vendor is performing vertical construction services under the Agreement, Vendor shall procure and maintain "All-Risk" Builder's insurance, written on a commercially recognized policy form, providing coverage for the Work performed under the contract, and the materials, equipment or other items incorporated therein, while the same are located at the construction site, stored off-site, or at the place of manufacture. The policy limit shall be in a minimum amount equal to the "full insurable value" of such equipment and 100% of the value of the Agreement, including any additional costs which are normally insured under such policy. The insurance coverage shall include boiler and machinery insurance on a comprehensive basis and include coverage against damage or loss caused by earth movement (including but not limited to earthquake, landslide, subsidence and volcanic eruption), fire, flood, hurricanes, explosion, hail, lighting, weather, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke, or other cataclysmic events, and coverage against damage or loss caused by machinery accidents and operational and performance testing, commissioning and start-up, with extended coverage, and providing coverage for transit, with sub-limits sufficient to insure the full replacement value of the property or equipment removed from its site and while located away from its site until the date of final acceptance of the Work.
- The making of progress payments to Vendor shall not be construed as relieving Vendor or its subcontractors or insurance carriers providing the coverage described herein for responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance of the Work.
- e) Commercial Umbrella Liability Coverage: \$2,000,000 in liability coverage per occurrence above the Agreements stated minimum coverage limits for Commercial General Liability, Commercial Automobile, and Professional Liability policies of insurance.
- C. Deductibles and Self-Insured Retention: Any deductibles or self-insurance retentions must be declared to and approved by County so that County may ensure the financial solvency of Vendor. At the option of County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, and employees; or Vendor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Vendor shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.
- D. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:



1. General Liability and Umbrella/Excess Insurance

- a) **Additional Insured Requirement.** Cobb County, its elected and appointed officials, officers, boards, commissions, officers, employees, representatives, servants, volunteers and agents (hereinafter referred to as “Insured Party” or “Insured Parties”) shall be **covered as additional insureds** as respects: liability arising out of activities performed by or on behalf of Vendor; products and completed operations of Vendor, premises owned, leased, or used by Vendor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require Vendor to provide liability insurance coverage to the any Insured Party for claims asserted against such Insured Party for its sole negligence.
  - b) **Primary Insurance Requirement.** Vendor’s insurance coverage shall be primary and noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of Vendor’s insurance and shall not contribute with it.
  - c) **Reporting Requirement.** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.
  - d) **Separate Coverage.** Coverage shall state that the Vendor’s insurance shall apply separately to each Insured Party against whom claim is made or suit is brought.
  - e) **Defense Costs/Cross Liability.** Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion.
- E. Workers’ Compensation and Employers Liability Coverage: Vendor shall have and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by Vendor, its agents, representatives, employees or subcontractors. The insurer shall agree to waive all rights of subrogation against County and its officers, officials, employees, and volunteers for losses arising from the work performed by Vendor for County.
- F. Waiver of Subrogation: The insurers shall agree under each policy of insurance required by this Agreement to waive all rights of subrogation against the Insured Parties for losses arising from work performed by Vendor for County.
- G. All Coverages:
- 1. Notice Requirement. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to County as provided in the Notice Section of this Agreement. County reserves the right to accept alternate notice terms and provisions provided they meet the minimum requirements under Georgia law.
  - 2. Acceptability. The insurance to be maintained by Vendor must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of

Georgia. Such insurance shall be placed with insurers with a minimum AM Best's Policyholder's Rating of "A" or better and with a financial rating of Class VIII or greater or be otherwise acceptable to Cobb County.

3. Failure of Insurers. Vendor shall be responsible for any delay resulting from the failure of any insurer to furnish proof of coverage in the prescribed form.
- H. Verification of Coverage: Vendor shall furnish County with certificates of insurance and endorsements to the policies evidencing all coverages required by this Agreement. Additionally, the declarations page for each insurance policy listed on the certificate of insurance shall be submitted to County. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements shall be received and approved by County before any work commences. County reserves the right to require complete, certified copies of all required insurance policies at any time. Vendor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage. Vendor's failure to comply with this provision shall be considered a material breach of the Agreement.
- I. Subcontractors: Vendor shall require all subcontractors to maintain insurance that is industry standard for the scope and risk of the services being provided by that subcontractor.
- J. Failure to Comply: Failure to comply with all insurance requirements set forth in this Section and applicable to this agreement will not relieve Vendor from any liability under the agreement will not be construed to conflict with or limit Vendor's indemnification obligation obligations under the agreement.
- K. Duration: All insurance required by this Section must be maintained during the entire term of the agreement, including any renewal or extension terms, and until all Work has been completed to the satisfaction of County.

#### **IX. Records: Retention and Confidentiality**

- A. Examination and Retention of Records. Vendor shall maintain, and County and its representatives shall have the right to audit, examine, all books, records, documents, accounting procedures and practices, and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the Work or performance of the Contract and similar materials relating to work performed for County under this Contract on file for at least ten (10) years following the date of final payment to Vendor by County. Vendor shall maintain all books, records, work papers, documents, accounting ledgers, databases for at least ten (10) years following the date of final payment to Vendor by County. All records stored on a computer database must be of a format compatible with County's. Any duly authorized representative(s) of County shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during usual and customary business hours. All original documents, including, but not limited to, reports, plans, work papers, (including electronic copies), documents, data, and records developed in connection with the services performed hereunder shall belong to and remain the property of County. Vendor may retain electronic files and reproducible copies of such documents.
- B. Confidential Information. Vendor acknowledges that some information which may come into its possession or knowledge in connection with the Work may consist of confidential

information of County, its elected officials, or employees, the disclosure of which to, or use by, third parties may be damaging to County, its elected officials or employees and/or may violate applicable law(s). Vendor accordingly agrees to hold all such confidential information, together with all material containing confidential information, in strictest confidence, not to make use thereof other than as reasonably necessary to perform according to this Agreement, and not to release or disclose any confidential information to any other person or entity except as may be required by law. Vendor shall inform and instruct all employees, subcontractors, or other agents or representatives of this obligation of confidentiality. Vendor shall immediately remove any of its employees, subcontractors, or other agents or representatives from performing work in connection with this Agreement upon request of notice from County that County reasonably believes such person or entity has failed to comply with the confidentiality obligations hereunder. Any employee, subcontractor, or other agent or representative so removed shall be replaced as provided for in the staffing requirements of this Agreement. For the purposes hereof, "Confidential Information" includes, without limitation, all personally identifiable data, trade secrets, copyrighted material, and other confidential and proprietary information not subject to disclosure or use, as such terms may be respectively defined in O.C.G.A. § 10-1-761, O.C.G.A. § 50-18-72, 45 CFR. § 1 64.524, 45 CFR. § 84.14(d). "Confidential Information" further includes, without limitation, all employee data, personnel records, health records, physician and provider notes, medical bills, claims, and other written information of a personal nature.

- C. Open Records. Vendor acknowledges that County's disclosure of documentation is governed by Georgia's Open Records Act, Act, O.C.G.A. § 50-18-70 *et seq.*, and anything submitted to County is subject to release as public information. If Vendor believes that part or parts of its submission may be exempted from disclosure, Vendor must specify page-by-page and line-by-line the parts of the submission, which it believes, are exempt. In addition, Vendor must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s). As required by law, Vendor is responsible for protecting its trade secrets and other proprietary information.
- D. Request. To the extent practicable and not legally prohibited, Vendor shall promptly notify County of any request for County information including any request required by law or judicial or regulatory process or pursuant to Georgia's Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, prior to disclosing such information. In no case shall such notification occur more than five business days after receipt of such request.

#### X. Notices

- A. All written notices, demands, and other papers or documents to be delivered to County or Vendor under this Contract shall be delivered personally, by prepaid registered or certified mail return receipt requested, or by overnight receipted delivery service to the following addresses:
1. If to Cobb County:

<insert department>

<insert address here>

Attention: <insert name here>

Electronic notice to: <insert email address here, or specify N/A>

Cobb County Attorney  
100 Cherokee Street, Suite 350  
Marietta, GA 30090

2. If to Vendor:

**Vendor Name**  
<address>  
Attention: <insert name here>

Electronic notice to: <insert email address here, or specify N/A>

- B. Any subsequent changes to place or places specified above shall be designated in writing by Vendor and County to the other.

### **XI. Relationship of the Parties**

Vendor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of County. Nothing contained in this Agreement shall be construed to make Vendor or any of its employees, servants or subcontractors an employee, servant or agent of County for any purpose. Vendor agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; the instrumentalities, tools, supplies and/or materials necessary to complete the Work; hiring of subcontractors, agents or employees to complete the Work; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. County will not withhold income or other taxes on the fees paid to Vendor under this Contract and Vendor shall be solely responsible for the payment of all such taxes. Vendor is not entitled to any of the benefits that County provides for County's employees. Vendor agrees to be solely responsible for its own acts and omissions and those of its subordinates, employees, subcontractors, and suppliers during the life of this Agreement. Vendor specifically shall be responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract requirements. There shall be no contractual relationship between any subcontractor or supplier and County by virtue of this Agreement with Vendor. Any provisions of this Agreement that may appear to give County the right to direct Vendor as to the details of the services to be performed by Vendor or to exercise a measure of control over such services will be deemed to mean that Vendor shall follow the directions of County with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and County may hire additional entities to perform Work related to this Agreement. Inasmuch as County and Vendor are independent of each other, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both Parties hereto. Vendor agrees not to represent itself as County's agent for any purpose to any party or to allow any employee of Vendor to do so, unless specifically authorized, in advance and in writing, to do

so, and then only for the limited purpose stated in such authorization. Vendor shall assume full liability for any contracts or agreements Vendor enters into on behalf of County without the express knowledge and prior written consent of County.

#### **XIV. Georgia Security and Immigration Compliance Act**

- A. Immigration Compliance. County and Vendor agree that compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of services. Physical performance of services includes any performance of labor or services for a public employer using a bidding process or by contract wherein the labor or services exceed \$2,499.99.
- B. Vendor further agrees and represents that its compliance with the requirements of O.C.G.A. §13-10-91 and DOL Rule 300-10-1.02 is attested to on the executed **Exhibit “11-A” Contractor Affidavit and Agreement**, included herein by reference.
- C. Vendor further agrees and represents that:
  - 1. Vendor (and any subcontractors, regardless of tier) shall fully comply with the requirements for completing **Exhibit “11-C” Immigration Compliance Certification** and that such certification shall be received by County prior to the commencement of any work under the contract or subcontract;
  - 2. Vendor (or any subcontractor, regardless of tier) shall notify County within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;
  - 3. Vendor shall be responsible for obtaining and providing to County **Exhibit “11-B” Subcontractor Affidavit and Agreement** and **Exhibit “11-C” Immigration Compliance Certification**, each incorporated herein by reference, from each subcontractor, regardless of tier, employed or retained for work under the contract prior to the commencement of any work under the contract or any subcontract;
  - 4. County reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
  - 5. Any contractor and/or subcontractor retaining any other subcontractor to perform services under the contract shall provide legal notice to any subcontractor of the requirements of County for immigration compliance and further provide notice that County reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
  - 6. Failure to comply with any of the requirements and procedures of County (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by county or state officials upon request; and/or failure to continue to meet any of the statutory or county obligations during the life of the contract) shall constitute a material breach of the Agreement and shall entitle County to dismiss any general contractor or to

require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;

7. Upon notice of a material breach of these provisions, Vendor (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, County shall be entitled to all available remedies, including termination of the Contract, the requirement that a subcontractor be dismissed from performing work under the Contract, and any and all damages permissible by law.

- D. Immigration Compliance Certification. Prior to commencing work under any contract for the physical performance of services, Vendor shall submit a completed **Exhibit "11-C" Immigration Compliance Certification**. Prior to allowing any other subcontractor to perform work under the contract, Vendor shall obtain a completed **Exhibit "11-C" Immigration Compliance Certification** from each subcontractor (regardless of tier) and submit the same to County.

#### **XV. Conflict of Interest Affidavit**

- A. Vendor agrees and shall execute **Exhibit "12" Conflict of Interest Affidavit** attesting that it shall not engage in any activity or conduct that would result in a violation of the Cobb County Code of Ethics or any other similar law or regulation. Vendor certifies that, to the best of its knowledge, no circumstances exist that will cause a conflict of interest in performing the services required by this Agreement, that no employee of County, nor any member thereof, nor any public agency or official affected by this Agreement, has any pecuniary interest in the business of Vendor or his subcontractor(s) and that no person associated with Vendor or its subcontractor(s) has any interest that would conflict in any manner or degree with the performance of the Agreement.

Should Vendor become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Vendor shall immediately notify County. If County determines that a conflict of interest exists, County may require that Vendor take action to remedy the conflict of interest or terminate the Agreement without liability. County shall have the right to recover any fees paid for services rendered by Vendor when such services were performed while a conflict of interest existed, if Vendor had knowledge of the conflict of interest and did not notify County within five (5) business days of becoming aware of the existence of the conflict of interest.

- B. Vendor warrants that it and its subcontractor(s) have not employed or retained any company or person, other than a bona fide employee working solely for Vendor or its subcontractor(s), to solicit or secure this Agreement and that Vendor and its subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Vendor or its subcontractor(s) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of this Agreement. For any breach or violation of this provision, County shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment, or consideration.
- C. Vendor shall include the terms and conditions of Paragraphs A and B of this Section in all subcontractor agreements for Work to be performed under this Agreement.

## **XII. Miscellaneous.**

- A. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes, and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Cobb County, Georgia, and Vendor submits to the jurisdiction and venue of such court. Prior to filing any claim or action related to this Contract, the parties may, but shall not be obligated to, submit such claim or action to non-binding mediation before a mediator mutually agreeable to the parties. The parties shall share equally in the costs of mediation.
- B. Severability of Provisions. If a part or any provision of this Contract shall be deemed invalid or unenforceable under applicable law, said part shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of the Contract, which shall be interpreted so as to give the greatest effect possible thereto.
- C. Review and Inspection of Work. Vendor shall produce progress reports or copies of any Work as performed under this Contract at any time as requested by County. Refusal by Vendor to submit progress reports shall be cause to withhold payment to Vendor until Vendor complies with County's request in this regard, or cause for termination of this Contract.
- D. Assignment. This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto. This Agreement may not be assigned by County or Vendor without the prior, written consent of the other party.
- E. Third Party Beneficiaries. Neither party intends to directly benefit a third party by this Contract. The parties agree that no third party shall be entitled to assert a right or claim against either of them based on this Contract.
- F. Materiality. Each term of this Agreement is material, and Vendor's breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to County at law or in equity.
- G. Compliance with Laws. Vendor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under the Contract.
- H. Amendment. No modification, amendment, or alteration in the terms or conditions contained herein or in the Contract shall be effective unless contained in a written document prepared with the same formality as the Contract and agreed to by both Parties in writing.
- I. Preservation of Immunities. No provision of this Agreement shall be construed or interpreted so as to waive any of the immunities or protections otherwise afforded the parties by the Constitution, statutes, rules and regulations of the State of Georgia. Nothing contained in this Agreement shall be construed to be a waiver of County's sovereign immunity or any individual's qualified good faith or official immunities.
- J. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- K. Waiver. No failure by County to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Vendor with this Agreement, and no custom or practice of

County at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect County's right to demand exact and strict compliance by Vendor with the terms and conditions of this Agreement. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

- L. Headings. All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement.
- M. Time is of The Essence. With regard to all dates and/or time periods in this Agreement or any of the documents incorporated by reference into this Agreement and/or the mutually agreed to project plan, time is of the essence.
- N. Subcontracts. Vendor shall be responsible for the work products and actions of all subcontractors. All subcontractors are subject to approval by County. Subcontractors must comply with the same insurance requirements as Vendor. Subcontractors must comply with the requirements of the Georgia Security and Immigration Compliance Act as set forth in this Agreement.
- O. Liquidated Damages. The Parties acknowledge and agree that delays in the completion of the Work will result in damages to County and that the exact sum of such damages to County are impossible to precisely estimate and will be difficult to ascertain. If the Work is not completed in accordance with **Exhibit "4-A" Project Schedule**, then Vendor shall be required to pay County \$100 per business day that the Work is delayed. The liquidated damages set forth in this section are intended to be, and the parties acknowledge and agree that (1) the liquidated damages are reasonably proportionate to and are a reasonable estimate of the probable loss that Owner is likely to incur as a result of delays, and (2) the liquidated damages are not intended to be a penalty.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, said parties have hereunto set their seals.

**Vendor**

**County**

\_\_\_\_\_  
**Name and Title**

\_\_\_\_\_  
Lisa N. Cupid, Chairwoman

\_\_\_\_\_  
**Vendor Name**

\_\_\_\_\_  
Cobb County Board of Commissioners

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SEAL

Attest:

Attest:

\_\_\_\_\_  
**Name and Title**

\_\_\_\_\_  
Pamela L. Mabry, County Clerk

Recommended by:

\_\_\_\_\_  
**Name and Title**

Approved as to Form

\_\_\_\_\_  
Cobb County Attorney's Office

**Exhibit “1” Invitation to Bid or Request for Proposal**

**Exhibit “2” Vendor’s Bid or Proposal**

**Exhibit “3” Vendor’s Price Quote**

**Exhibit “4” Vendor’s Statement of Work**

**Exhibit “4-A” Project Schedule**

**Exhibit “5” Vendor’s End User License Agreement (EULA), License, Software**

**Exhibit “6” Vendor’s Maintenance or Support Agreement**



**Exhibit “7” Vendor’s Service Level Agreement**

## **Exhibit “9” Information Security**

### **Information Security**

#### **1. General Provisions**

- 1.1. Contractor represents and warrants that it will comply with all applicable federal, state, and local privacy and data protection laws, as well as all other applicable regulations.
- 1.2. Contractor shall implement administrative, physical, and technical safeguards to ensure the security of Protected Information that are no less rigorous than accepted industry practices including National Institute of Standards and Technology (NIST) 800-53, Center for Internet Security (CIS) controls, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, the Information Technology Infrastructure Library (ITIL) standards, or other applicable industry standards for information security, and shall ensure that all such safeguards, including the manner in which Protected Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.
- 1.3. All employees and subcontractors given access to any Personally Identifiable Information (PII) or Restricted or Protected Information such as information protected as or by Payment Card Industry Data Security Standard (PCI DSS), PII, Health Insurance Portability and Accountability Act (HIPAA), Criminal Justice Information Services (CJIS), etc. must agree to abide by the terms of the Agreement and restrict the use of Protected Information only for subcontractor's or employees' internal business purposes and only as necessary for the execution of the Agreement.
- 1.4. Contractor shall maintain current supported operating system for Cobb County systems.
- 1.5. Contractor shall provide evidence of background check completion.
- 1.6. If any regulator, or any subpoena, warrant, or other court or administrative order, requires Contractor to disclose or provide County Data to a regulator or to any third party, or to respond to inquiries concerning the processing of County Data, Contractor shall promptly notify County, unless prohibited by applicable law. Following such notification, Contractor shall reasonably cooperate with County in its response, except to the extent otherwise required by applicable law.
- 1.7. County consents to Contractor's use of subcontractors to provide aspects of the Services and to Contractor's disclosure and provision of County Data to those subcontractors. Contractor shall be responsible for the performance of its subcontractors. Contractor shall ensure subcontractors are subject to contractual obligations which are the same as or equivalent to those imposed on Contractor with regard to the processing of County Data. Contractor shall maintain a list of its subcontractors on its company website under the Privacy page. Contractor shall inform County of any intended changes concerning the addition or replacement of any subcontractor within a reasonable time prior to implementation of such change. In the event of County objecting to such change, Contractor shall make reasonable efforts to address County's concerns (including making reasonable efforts to find an alternative subcontractor).

- 1.7.1. Contractor shall comply and shall require its personnel and subcontractors' personnel to comply, with all applicable laws, rules, and regulations, as well as County policies and standards in effect during the performance of this Agreement, including (without limitation) County's reasonable confidentiality requirements, County's policies, standards and procedures regarding data access, security, personnel conduct, safety, and ethics, including spoken directives of County facility staff. In the event that any of Contractor's or a subcontractor's personnel do not comply with such requirements, County, in its sole reasonable discretion, may have the personnel's access revoked and/or have such personnel removed from the premises.

## **2. Compliance**

- 2.1. If, in the course of this engagement, Contractor has access to or will collect, access, use, store, process, dispose of or disclose credit, debit, or other payment cardholder information, Contractor shall at all times remain in compliance with the PCI DSS requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS at Contractor's sole cost and expense.
- 2.2. If, in the course of this engagement, Contractor has access to or will collect, access, use, store, process, dispose of or disclose protected health information, Contractor shall at all times remain in compliance with HIPAA requirements, including remaining aware at all times of changes to HIPAA and promptly implementing all procedures and practices as may be necessary to remain in compliance with HIPAA at Contractor's sole cost and expense.
  - 2.2.1. Contractor agrees to execute and incorporate into this Agreement a Business Associate Agreement if and when it is necessary under HIPAA, including any regulations promulgated thereunder, including as a result of a change in the Services or the manner in which they are provided.
- 2.3. If, in the course of this engagement, Contractor has access to or will collect, access, use, store, process, dispose of or disclose criminal justice information, Contractor shall at all times remain in compliance with CJIS requirements, including remaining aware at all times of changes to CJIS and promptly implementing all procedures and practices as may be necessary to remain in compliance with CJIS, including certifying staff for background check and training, at Contractor's sole cost and expense.
- 2.4. In respect of Personal Data provided to Contractor by County in connection with the Agreement, Contractor shall comply and shall ensure that its personnel complies, with the requirements of state, federal, and national privacy laws and regulations governing such Personal Data in Contractor's possession or under its control and applicable to Contractor's provision of Services.
- 2.5. Contractor shall notify County, without undue delay, of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to County Data in Contractor's possession or under its control (a "Data Breach"). Each party shall reasonably cooperate with the other with respect to the investigation and resolution of any Data Breach including, in the case of Contractor, prompt provision of the following, to the extent then known to Contractor: (i) the possible cause and

consequences of the Data Breach; (ii) the categories of County Data involved; (iii) a summary of the possible consequences for the relevant users; (iv) a summary of the unauthorized recipients of County Data; and (v) the measures taken by Contractor to mitigate any damage. Upon confirmation of any vulnerability or breach of Contractor's security affecting County Data in Contractor's custody and control, Contractor shall modify its processes and security program, as necessary, to mitigate the effects of the vulnerability or breach upon such County Data.

### **3. Data Security**

- 3.1. Contractor shall ensure all County Data remains within the United States and is not processed, stored, transmitted, or disposed of out of the country without the prior written authorization by County.
- 3.2. Where possible, Contractor shall remove, disable or change all default credentials prior to placing equipment into production. Removal is preferable.
- 3.3. Contractor shall uninstall or disable unnecessary programs and services prior to placing equipment into production. Uninstalling is preferable.
- 3.4. Contractor shall implement and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of County Data in the custody of and processed by Contractor; (ii) protect against any anticipated threats or hazards to the security or integrity of such County Data; (iii) protect against unauthorized access to or use of such County Data; and (iv) ensure that Contractor's return or disposal of such County Data is performed in a manner consistent with Contractor's obligations under items (i)-(iii).
- 3.5. Contractor shall store all County backup data as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. Contractor shall encrypt all County confidential data. Encryption solutions will be deployed with no less than a 128-bit encryption key using the Advanced Encryption Standard (AES). The encryption standards apply to data at rest and data in motion.
- 3.6. Contractor shall use Transport Layer Security (TLS) protocol TLS 1.2 or higher.
- 3.7. If any user requests Contractor to provide them with information relating to processing of their Personal Data, or to make changes to their Personal Data, Contractor shall promptly notify County of the request, unless otherwise required by applicable law. County may make changes to User Data using the features and functionality of the Application. Contractor shall not make changes to User Data except as agreed in writing with County. Contractor shall process County Personal Data only as necessary to provide the Services, and in accordance with County's written instructions. This Agreement and County's use of the Application's features and functionality are County's instructions to Contractor in relation to the processing of County Personal Data.
- 3.8. County is solely responsible for its data retention obligations with respect to County Data. County may export County Data from the Application at any time during the Agreement Term, using the Application's then existing features and functionality, at no additional charge. County may delete County Data on its Instances at any time. Contractor shall delete County's Instances (and any data remaining on such Instances) upon termination or expiration of the Agreement.

- 3.9. All rights, title, and interest in and to County Data are and shall remain the property of County. County understands that certain applications will not function absent County Data, and as such, County shall provide digital files, in the form and format and on the schedule specified by Contractor, County Data, and other information reasonably required for Contractor's performance of its obligations under the Agreement. Subject to the terms of the Agreement, County hereby grants to Contractor throughout the term of the Agreement (and after the term solely as reasonably necessary for the performance of Contractor's post-termination obligations to County) the rights to use, reproduce, store, distribute, modify, cache, and transmit County Data via the applicable Application solely to the extent necessary for Contractor to provide the Services or otherwise perform its obligations under the Agreement. Contractor shall allow access to County Data on a need to know basis using the principle of least privilege.
- 3.10. County Data will be and remain the property of County. Contractor may not use County Data for any purpose other than to render the Services. No County Data will be sold, assigned, leased, or otherwise disposed of to third parties or commercially exploited by or on behalf of Contractor (or any of its Subcontractors). Neither the Contractor nor any of its Subcontractors may possess or assert any lien or other right against or to County Data. Without limiting the generality of the foregoing, (a) the Contractor may use County Data only as strictly necessary to render the Services and must restrict access to such information to Contractor Personnel on a strict need-to-know basis, and (b) the Contractor will not download, copy, transmit or make available any County Data to any third party, except as expressly permitted by this Agreement.
- 3.11. When County Data is in the Contractor's possession or under the Contractor's control and an event occurs that prevents or hinders the access to or reliable use of such County Data, the Contractor will re-create or restore such data immediately, or in any case, as soon as reasonably practicable, to the last scheduled back-up applicable to such County Data in accordance with the Contractor's responsibilities hereunder. Any such re-creation or restoration will be at the Contractor's expense and County will not be subject to any charge in connection therewith.
- 3.12. The Contractor will maintain a comprehensive Security Program in compliance with (i) County Rules and (ii) the Federal Information Security Management Act (FISMA), 44 U.S.C. § 3541 *et seq.* The content and implementation of the Security Program and associated technical, organizational, and security measures will be fully documented by the Contractor.

#### **4. Right to Audit**

- 4.1. Vendor shall provide County Information Security Team with the most recent Service Organization Control 2 (SOC 2) Type 2 Report upon request to assess the effectiveness of security processes by observing operations for at least three months, but preferably 6-12 months.
- 4.2. Contractor shall maintain compliance with industry standards and applicable governing frameworks such as Statement on Standards for Attestation Engagements (SSAE) and the International Organization for Standardization (ISO) (e.g., SSAE 16, ISO 27001, and ISO 27018) throughout the Agreement Term. Contractor shall make available to County, annually and upon request, all information necessary to demonstrate compliance with its

obligations. Contractor shall allow for and contribute to audits conducted by County, or third-party auditor mandated by County, under the following parameters:

- 4.2.1. County may elect to conduct an audit not more than once within any 12-month period at no cost to County. Any additional audits within the same 12-month period shall be subject to a reasonable fee;
- 4.2.2. Third-party auditors mandated by County shall enter into confidentiality agreements with Contractor that are no less restrictive than those set out in this Agreement;
- 4.2.3. County provides reasonable prior notice of such request for an audit;
- 4.2.4. County ensures such audit shall not be unreasonably disruptive to Contractor's business; and
  - 4.2.4.1.1. Neither County nor its auditors shall be permitted to make unaccompanied site visits or to logically access Contractor's IT systems.

## **5. Confidential Information**

- 5.1. Contractor's employees, agents, and subcontractors may have access to confidential data maintained by County to the extent necessary to carry out Contractor's responsibilities under the Agreement. Contractor shall presume that all information received pursuant to the Agreement is confidential unless otherwise designated by County. If it is reasonably likely Contractor will have access to County's confidential information, then:
  - 5.1.1. Contractor shall provide to County a written description of Contractor's policies and procedures to safeguard confidential information;
  - 5.1.2. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
  - 5.1.3. Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by Contractor in connection with the performance of the Services; and
  - 5.1.4. Contractor shall provide adequate supervision and training to its agents, employees, and subcontractors to ensure compliance with the terms of the Agreement.
- 5.2. The private or confidential data shall remain the property of County at all times. Some services performed for County may require Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement if required, may result in termination of the Agreement.
- 5.3. No confidential data collected, maintained, or used in the course of performance of the Services shall be disseminated except as authorized by law and with the written consent of County, either during the period of the Agreement or thereafter. Any data supplied to or created by Contractor shall be considered the property of County. Contractor shall return any and all data collected, maintained, created, or used in the course of the performance of the Services, in whatever form it is maintained, promptly at the request of County.
- 5.4. In the event that a subpoena or other legal process is served upon Contractor for records

containing confidential information, Contractor shall promptly notify County and cooperate with County in any lawful effort to protect the confidential information.

5.5. Contractor shall immediately report to County any unauthorized disclosure of confidential information.

5.6. Contractor's confidentiality obligation under the Agreement shall survive termination of the Agreement.

## **6. Termination**

6.1. Following the termination or expiration of this Agreement, Contractor shall offer transition assistance, which may include, to the extent practicable, an export of County Data from the applicable Application or Instance. To the extent Contractor makes available to County an Application Program Interface (API) or other means to assist with such transition, the API shall be Contractor's Confidential Information, and County is granted a personal, non-sublicensable, nonexclusive, non-transferable, limited license to use the API solely for County's internal use for exporting County's content from the existing system to the new County system. County shall not (a) copy, rent, sell, disassemble, reverse engineer, or decompile (except to the limited extent expressly authorized by applicable statutory law), modify, or alter any part of the API, or (b) otherwise use the API on behalf of any third party. The API license shall automatically terminate in the event County breaches this Section or immediately upon notice from Contractor.

6.2. Upon termination of this Agreement and transfer of data to County, Contractor shall sanitize/erase, destroy, and render unrecoverable all County Data still in its possession and certify in writing that these actions have been completed within thirty (30) days of the termination of this Agreement and transfer of data or within seven (7) days of the request of an agent of County, whichever shall come first. At a minimum, a "Clear" media sanitization is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitization, SP800-88, Appendix A (<http://csrc.nist.gov/>).

6.3. In order to protect the interests of the public, Contractor agrees that upon termination of this Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to County or another contractor. Contractor shall provide full disclosure to County and third-party contractor of the equipment, Software, Licenses, and Services required to perform for County. Contractor shall transfer licenses or assign agreements for any Software or third-party services used to provide the Services to County or to another contractor.

Further, in the event that County has entered into or enters into agreements with other contractors for additional work related to services rendered under the Contract, Contractor agrees to cooperate fully with such other contractors. Contractor shall not commit any act, which will interfere with the performance of work by any other contractor.

## **Exhibit “10-A” Change Control Definitions and Process**

### **1. Change Control Definitions and Process**

Project scope and schedule changes to **Exhibit “4” Vendor’s Statement of Work** shall be addressed through this Change Control Process using **Exhibit “10-B” Change Order Form**. Any changes shall be documented, reviewed, and mutually agreed upon by the Parties. The Change Order Form shall document the scope of work and a fee. Implementation of the change shall be factored into the initial project plan and a modified completion date for the project will be detailed, if necessary. The hourly bill rate for all change orders is \$ \_\_\_\_\_ USD.

### **2. Change Control Definitions**

- a. **“Change Control”** describes the process for managing potential project changes.
- b. **“Change Request”** is an informal request by Customer or Vendor to modify the scope, schedule, and/or budget of the Professional Services to be provided pursuant to SOW-#.
- c. **“Change Order”** is a formal amendment to SOW-#.generated by Vendor signed by both parties.

### **3. Change Control Process**

The following provides a summary of the process to follow if a change to this SOW is desired:

- a. Customer or Vendor submits a written (email acceptable) Change Request including the following:
  - i. change description, detailing what is to be amended from this SOW
  - ii. rationale for the change
  - iii. impact the change may have on the Professional Services
- b. Both Customer and Vendor review the Change Request to determine the merits of the request and the impact of on the fees, schedule, scope, and other terms and conditions of the SOW that may result from the implementation of the Change Request.
- c. The parties decide either to accept or to reject the change.
- d. Vendor prepares a Change Order, which includes a description of the applicable changes to scope, estimated fees, planned resources, timeline, and any other terms.
- e. Vendor submits Change Order to Customer for final review and approval.
- f. Vendor executes the Change Order and sends to Customer.
- g. Customer executes the Change Order, and if applicable, generates a purchase order associated with that Change Order.

The Professional Services described in the fully executed Change Order will be performed by Vendor as included as part of the **Exhibit “4” Vendor’s Statement of Work**.



### **Exhibit “10-B” Change Order Form**

Change Order No. **X** (“Change Order”) by and between County and Vendor Name (“Vendor”) is subject to all the terms and conditions of **Exhibit “4” Vendor’s Statement of Work** (“SOW”) in the Agreement between County and Vendor Name dated mm/dd/yyyy.

The Parties agree to revise the scope and budget of the SOW as follows:

#### **1. Change Order Summary**

This Change Order is necessary to redefine the requirements to accommodate changes requested by the County for <insert description here>.

#### **2. Tasks Removed from Scope**

The tasks below have been removed from the scope of the project:

#	Task
1	
2	
3	

#### **3. Tasks Added to Scope**

The tasks below are added to the scope of the project:

#	Task
1	
2	
3	

#### **4. Estimated Hours**

The Change Order represents an update to the Budgetary Guidance set forth in **SOW-X** as follows:

Change Order Scope		Estimated Time to Complete (in hours)
1		
2		
3		

	<b>Totals Hours:</b>	
--	----------------------	--

**5. Change Order Effect on SOW-X Scope Hours and Cost**

<b>Original SOW Budgetary Guidance</b>	<b>Original Project Scope Hours</b>	<b>Change Order #</b>	<b>Increase (Decrease) Hours</b>	<b>Increase (Decrease) Cost</b>	<b>New Project Scope Hours</b>	<b>New Project Budget</b>
<b>Total Project Hours and Budget</b>						

**6. Change Order Payment Terms**

Actual professional services under this Change Order will be billed at an hourly rate of at \$xxx.xx USD and invoiced monthly with net 30 payment terms.

If no Bill Rate is provided above, billing for actual professional services under this Change Order will be agreed to by the Parties and will include:

Bill Rate

Invoice Frequency

Net Payment Terms

If travel and expenses (T&E) are expected, details are included in this formal Change Order and will be agreed to and executed between the Parties.

**Exhibit “11-A” Contractor Affidavit and Agreement**

**CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned Contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached **Exhibit “11-B” Subcontractor Affidavit and Agreement** prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed **Exhibit “11-C” Immigration Compliance Certification** prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance for a period of five (5) years and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Allow the audit or review of records of compliance by County upon request.

\_\_\_\_\_  
EEV (E-Verify) Program Number

\_\_\_\_\_  
EEV Program Date of Authorization

\_\_\_\_\_  
BY: Authorized Officer or Agent  
[Contractor Name]

\_\_\_\_\_  
Contractor Business Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_

\_\_\_\_\_  
Commission Expires: \_\_\_\_\_

*Version 09-20-2013*

**Exhibit "11-B" Subcontractor Affidavit and Agreement**

**SUBCONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned subcontractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the **Exhibit "11-B" Subcontractor Affidavit and Agreement** prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed **Exhibit "11-C" Immigration Compliance Certification** prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

\_\_\_\_\_  
EEV (E-Verify) Program Number

\_\_\_\_\_  
EEV Program Date of Authorization

\_\_\_\_\_  
BY: Authorized Officer or Agent  
[Subcontractor Name]

\_\_\_\_\_  
Subcontractor Business Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_

\_\_\_\_\_  
Commission Expires: \_\_\_\_\_

*Version 09-20-2013*

**Exhibit "11-C" Immigration Compliance Certification**

**EMPLOYER IMMIGRATION COMPLIANCE CERTIFICATION**

*(To be completed by Contractor and all subcontractors prior to contract initiation, every six months after commencement of work, and at any time there is a change in personnel assigned to the Project.)*

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to the <...>:


I further certify to Cobb County, Georgia the following:

1. The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
2. We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed;
3. If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the Project;
4. I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9s are accurate;
5. To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States;
6. If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the Project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

**Sworn to by:**

**Employer Name & Address:**

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_

Commission Expires: \_\_\_\_\_

*Version 09-20-2013*

**Exhibit “12” Conflict of Interest Affidavit**

As a duly authorized representative of **Vendor Name** (“Vendor”), I, **<insert affiant’s name>**, **<insert affiant’s title>**, certify that to the best of my knowledge that Vendor did not engage in any activity or conduct that would result in a violation of the Cobb County Code of Ethics or any other similar law or regulation, that no circumstances exist that will cause a conflict of interest in performing services for Cobb County, Georgia, that no employee of Cobb County, nor any public agency official or employee affected by this Agreement has any pecuniary interest in the business of this firm, associates or consultants of this firm, or the firm’s parent firm, subsidiary, or other legal entity of which this firm is a part, and that no person associated with or employed by this firm has any interest that would conflict in any way, manner or degree with the performance of services for Cobb County, Georgia.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

Subscribed and sworn before me  
on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**COBB COUNTY  
PURCHASING DEPARTMENT**

122 Waddell Street NE  
Marietta, Georgia 30060  
phone: 770-528-8400 • fax: 770-528-8428

**ADDENDUM NO. 1**

**Sealed Proposal # 24-6833  
Request for Proposals  
Human Resource Information Systems and Related Products and Services  
Cobb County Procurement Services Department**

**Date: July 18, 2024**

Page 1 of 10

The following addendum hereby amends and/or modifies the Proposal Documents and specifications as originally issued for this project. All proposers are subject to the provisions of this Addendum.

**This Addendum consists of:**

- **Minutes, Questions and Clarifications from Pre-Proposal Meeting on July 10, 2024**
- **Sign-In Sheet(s) from Pre-Proposal Meeting**
- **Questions Submitted in Writing**

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**Receipt of addendum MUST be acknowledged in the submitted proposal. It is the Proposer's ultimate responsibility to ensure that they have all applicable addenda prior to proposal submittal.**

This acknowledgment form must be signed, dated, and included with your submitted proposal

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**All proposals must be received before 12:00 (noon) by the Proposal Close date. Proposals shall be delivered to Cobb County Procurement Services Department, 122 Waddell Street, Marietta, GA 30060.**

## ADDENDUM NO. 1

**Sealed Proposal # 24-6833  
Request for Proposals  
Human Resource Information Systems and Related Products and Services  
Cobb County Procurement Services Department**

**Date: July 18, 2024**

### **A. Pre- Proposal Meeting – 2:00 PM, July 10, 2024 (Virtual)**

#### **1. Proposal Submission Procedures**

- **Proposals are due August 8, 2024 before 12:00 PM, noon**, at the Cobb County Procurement Services Department, 122 Waddell Street NE, Marietta, GA 30060. *For GPS directions, please use the following address: 121 Haynes Street, Marietta, GA 30060.*
- Late proposals will not be accepted.
- Proposals will be opened at 2:00 PM on the same day at the Cobb County Procurement Services Department, 122 Waddell Street NE, Marietta, GA 30060.
- The proposal opening may also be watched on Cobb County's government access channel TV23 or the website ([www.cobbcounty.org](http://www.cobbcounty.org)).
- A Georgia Security & Immigration Act Affidavit (Exhibit A) must be included with the proposal. It must be signed and notarized; it must include the E-Verify number to be deemed as completed; if it is not included the proposal will be deemed non-responsive.
- Mark all packages with the company name and proposal number. Use the label in the proposal package.
- If addenda are issued, receipt of each addendum **MUST** be acknowledged in the submitted proposal. It is the Proposer's ultimate responsibility to ensure that they have all applicable addenda prior to proposal submittal. The acknowledgement form issued with each addendum must be signed, dated, and included with your submitted proposal. Failure to acknowledge addenda may result in the proposal being deemed nonresponsive. Addenda can be located at [www.cobbcounty.org/procurement-services](http://www.cobbcounty.org/procurement-services).
- **One (1) original, one (1) copy and five (5) flash drives**, each containing an identical electronic copy, of the proposal, must be submitted. Mark the box with the original copy with number 1.
- All questions must be submitted to Cobb County Procurement Services Department by **July 17, 2024 at 5:00 PM**. Questions may be faxed to (770) 528 –8428 or emailed to [procurementservices@cobbcounty.org](mailto:procurementservices@cobbcounty.org). Please reference the proposal number and proposal title on all questions.
- See the attached sign in sheet from the Pre-Proposal conference.

#### **2. General Notes Presented During Pre-Proposal Meeting**

- The intent of this RFP is to provide Participating Public Agencies with a full range of solutions to meet their human resource information system (HRIS) or human capital management (HCM) needs.
- Cobb County, GA has partnered with OMNIA Partners, Public Sector to award a contract from this solicitation and make it available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities and agencies for the public benefit.



- An overview of OMNIA Partners Public Sector and its divisions, including contracting, marketing, account management and partner development, that assist suppliers and agencies with contracts was provided.
- Reviewed Attachment A – OMNIA Partners Requirements and what must be submitted with the response:
  - The following must be submitted: Exhibits A, F, G
  - Review Exhibit B with your legal department and provide any redlines with response.
  - The following are examples/informational in nature: Exhibits B, C, D, E, H
  - While some of the exhibits are examples, any exceptions to any exhibit or any terms and conditions shall be submitted with the response.
  - For Exhibit E, proposers shall submit a sample of their reporting template if already in use with a contract.
  - For Exhibit G, complete even if no business is conducted in New Jersey (for future use, if necessary) but note “No Business Conducted in New Jersey” on the top of the first page.
- Include any exceptions to Cobb County’s sample contract or terms & conditions in your proposal response.

### 3. Questions Asked During Pre-Proposal Meeting (questions may be paraphrased for brevity)

**Question:** How do agencies get word about this contract once awarded?

**Answer:** The OMNIA Partners marketing team works with the supplier’s marketing team on all aspects of marketing including email, social media, etc. OMNIA Partners also has a partner development team that works with the supplier’s management team and sales team on training and strategy on the contract. OMNIA also has an inside sales team that works to market the contract along with OMNIA’s regional managers that market the contracts to agencies around the country.

**Question:** Are there any functional requirements? Is there a functional requirements document?

**Answer:** No. The County is looking to offer a broad selection of products and services contained in this RFP, under this OMNIA contract.

**Question:** If there are, can we get an extension?

**Answer:** No extension will be granted at this time.

**Question:** When will questions be answered after the July 17<sup>th</sup> deadline?

**Answer:** Questions will be answered as soon as possible. The County anticipates having the last addendum issued no later than July 25, 2024.

**Question:** Is the County intending to utilize the chosen system(s)?

**Answer:** With the potential for a multiple award for this contract, the County may elect to use one or several of the systems selected.

**Question:** Will those suppliers that respond and meet the requirements be awarded a contract?

**Answer:** This is not a pass/fail. The responses will be evaluated and ranked by a committee with the committee deciding if there will be a single award or if this will be a multiple award contract.

**Question:** Is implementation, setup, etc. included?

**Answer:** Yes. The intent is to award a contract that includes all systems and services up to and including maintenance and support.

**Question:** Is there a specific price sheet?

**Answer:** No. Proposers may include their own pricing sheet and structure, which can include percentage discounts, discounted pricing or both. Proposers may also include a tiered structure if applicable. If pricing is a lengthy Excel spreadsheet or is included as a link to a website page, proposers may include on the flash drive only as long as it is noted in the physical copies of the response.

**Question:** What agencies use these contracts? What size? Is there a list?

**Answer:** OMNIA contracts are utilized by agencies large and small. The agencies can include city, county, state, K-12, higher education and non-profits.

**Question:** If we currently hold an OMNIA contract, do we have to respond to this solicitation?

**Answer:** Responding to this solicitation is a business decision that each proposer needs to make.

**Question:** Can you explain more about not allowing responses for an HRIS that is part of an RFP?

**Answer:** The County is not interested in contracting for an ERP system that contains an HRIS system as part of it. If a proposer offers an HRIS system that is a standalone module from an ERP, and does not need the ERP to function alongside it, a response is welcome.

**Question:** What does the County currently use?

**Answer:** The County currently uses:

- UKG (formerly Kronos) for Timekeeping
- CGI Advantage Financial for Payroll & Employee Data
- NeoGov for Applicant Tracking
- SumTotal for Performance Management and Learning Management

**Question:** Could we get a list of current HRIS and HCM systems (based on pg. 2-3 of functional requirements) the County could possibly consider replacing?

**Answer:** See above.

**Question:** We only do applicant tracking and onboarding. Are you looking for something like that for the contract?

**Answer:** The County is looking to offer a broad selection of products and services under this OMNIA contract, so you are welcome to submit a proposal for evaluation.

**Question:** We focus on change management. Is there an opportunity for to provide pricing or a service matrix?

**Answer:** The County is looking to offer a broad selection of products and services under this OMNIA contract, so you are welcome to submit a proposal for evaluation. You are also encouraged to look at teaming opportunities with other interested suppliers.

## **B. Questions Submitted in Writing:**

**Question:** What is the total budget allocated for this project?

**Answer:** There is no allocated budget for this project. Cobb County anticipates spending \$1.5 million over the full term of the contract while the national opportunity is anticipated to be \$200M annually.

**Question:** Can work shared between onshore and offshore team, onshore being customer facing consultants and technical work can be accomplished by offshore?

**Answer:** Yes, as long as the requirements of the RFP are met as well as the Georgia Immigration and Compliance Act (E-Verify).

**Question:** Are there any specific integrations required with existing County systems? If so, which ones?

**Answer:** The system is required to integrate with the payroll processing system to bring over hours. There will also need to be an integration with the HR ERP system (CGI Advantage Financial) which tracks employees. Specific employee information is imported into the timekeeping system on a daily basis. This includes new employees and updated job location information. Include a list of compatible integrations that work with the proposed solution as part of the response.

**Question:** What is the expected timeline for implementation and go-live?

**Answer:** Implementation for each participating agency will depend on the agency and the negotiated timeline. This solicitation is not for a single implementation but for a national program which participating agencies can piggyback off for solutions.

**Question:** How many users (HR staff, managers, employees) are expected to use each module of the system?

**Answer:** The user count could vary for each participating agency. Cobb County currently has approximately 5,500 employees.

**Question:** What are the expectations for ongoing support and maintenance after implementation?

**Answer:** Ongoing maintenance is a requirement for any proposed system. Proposer shall also provide releases which shall include functionality upgrades and any necessary security updates.

**Question:** Can you provide more details on the current system being used for HR management, timekeeping and payroll? This will help understand the scope of data migration needed.

**Answer:** Participating agencies will have different systems in place. For the County, the current system allows for employees to track time and leave. Accruals are not calculated in the system but are brought over from the HR ERP system (CGI Advantage Financial). Our current system tracks different types of leave along with various types of time such as salaried, hourly, and other shift types for Public Safety.

**Question:** Will the County consider an extension on the due date for proposals in response to RFP: #24-6833 Human Resource Information Systems and Related Products and Services?

**Answer:** No extension will be granted at this time.

**Question:** Please confirm required action for the following items:

- The following need Response:
  - Proposal Submittal Form
  - Subcontractor Affidavit & Agreement (Cobb County Exhibit A-1)
  - Immigration Compliance Certification (Cobb County Exhibit A-2)
  - Omnia Exhibit A – Response for National Cooperative Contract
  - Omnia Exhibit F – Federal Funds Certifications
  - Omnia Exhibit G – New Jersey Business Compliance
    - Documents 1-10 Require Completion?
- The following require Legal Review/redline for submittal:
  - Contractor Affidavit & Agreement (Cobb County Exhibit A)
  - Omnia Exhibit B – Administration Agreement, Example
- The following have no action and are for example only:
  - Omnia Exhibit C – Master Intergovernmental Cooperative Purchasing Agreement, Example

- Omnia Exhibit D – Principal Procurement Agency Certificate, Example
- Omnia Exhibit E – Contract Sales Reporting Template
- Omnia Exhibit H – Advertising Compliance Requirement
  - Exhibits 1-12 Do not require Completion?

**Answer:** Correct, except for the following:

- The Subcontractor Affidavit & Agreement (Cobb County Exhibit A-1) and Immigration Compliance Certification (Cobb County Exhibit A-2) do not need to be submitted with the response; they are only required prior to contract execution.
- Contractor Affidavit & Agreement (Cobb County Exhibit A) must be submitted with the response.
- The Proposal Contents Section (Section 5) needs a response as well.

**Question:** Regarding Section 6 Evaluation in the RFP page 8 (pdf page 13) Are there specific evaluation points associated with A Relevant Experience, B Product, D Price, and E the Omnia Response?

**Answer:** The County does not disclose the points associated with each criterion.

**Question:** Also in Section 6 Evaluation in the RFP page 8 (pdf page 13) C Financial Stability: Should the last line read “Proposers who receive a score of 2 points or less will (NOT) be considered for award” was this a typo?

**Answer:** Yes, this was a typo. The sentence should read: “Proposers who receive a score of 2 points or less will not be considered for award.”

**Question:** Do we need to submit responses for the everything In Exhibit A? If so, are you looking for a detailed 90-day plan with our response as it states in section 3.3 Marketing and Sales.

**Answer:** Yes, where a response is required including the detailed 90-day plan.

**Question:** Could you provide a list of which forms must be completed with our response, and what the expectations are in the event we have exceptions?

**Answer:** See above (in notes from pre-proposal meeting and previous answers).

**Question:** Given that this is an RFP to establish a national purchasing contract, can you clarify that the Cobb County terms will not be included in the final contract as these would not be applicable to other Public Agencies?

**Answer:** The resulting Cobb County contract is the Master Agreement and is the national cooperative contract. All terms and conditions in the contract will apply to the national program unless specified as being specific to Cobb County. Exhibit C of the Master Agreement only applies to purchases made by Cobb County.

**Question:** With Respect to Exhibit A: Response for National Cooperative Contract, Section 3.3(N), can you please clarify whether Supplier is expected to review all solicitations it responds to in order to determine whether any prospect is an eligible Public Agency or whether these requirements apply only when the entity running the solicitation makes Supplier aware that it is an eligible Public Agency?

**Answer:** Supplier should review the options listed in 3.3(N) and respond to the options listed, detailing how they would respond to an agency using the listed options.

**Question:** With respect to Exhibit F (Federal Funds Certification), we do not anticipate any agreement under a resultant contract being considered a “subcontractor” or a “sub-recipient” relationship (as those terms are defined for the purposes of federal contracts/grants).

**Can you please confirm:**

- a. Is initialing these sections mandatory for a response to be considered responsive despite not applying to this arrangement? We note that the prior contract does not have these terms included therein.

1. If initialing those sections is mandatory, that it is possible to clarify in our response that those terms do not apply to the types of contracts into which we will be entering?
2. If initialing those sections is mandatory, that it is possible to clarify that certain sections do not apply as (for example) there will be no assignment of inventions or construction under this contract? "

**Answer:** Proposer shall provide redlines and exceptions to any terms and conditions they feel are not applicable.

**Question:** If during the term of this Agreement, the awardee develops or acquires products or services not detailed in the proposal but are within scope, can the awardee introduce this offering to the County with any additional pricings, terms, support agreements, service level agreements, third party terms, etc.?

**Answer:** As stated in the RFP, "New equipment, products and services may be added throughout the contract term by submitting additions for consideration by the County. If approved, all additions shall be treated as if contained herein."

**Question:** Per Exhibit C.C the order of precedence only references two documents by name and refers to "any other applicable documents." Would the County please clarify the anticipated, full order of precedence?

**Answer:** The County is unable to clarify as all other applicable documents are not known at this time. Order of precedence will be discussed and agreed to with the selected Proposer during contract negotiations.

**Question:** Exhibit C appears to be the standard Terms and Conditions when a vendor is engaged only with Cobb County, not for a national cooperative program. How does an interested vendor interpret what is required in Exhibit C vs. what terms are applicable to the national cooperative? Examples include II. Scope of Work, III. Compensation/Consideration, and IV. Term of Agreement.

**Answer:** The resulting Cobb County contract is the Master Agreement and is the national cooperative contract. All terms and conditions in the contract will apply to the national program unless specified as being specific to Cobb County. Exhibit C of the Master Agreement only applies to purchases made by Cobb County.

## PRE- PROPOSAL CONFERENCE

**Sealed Proposal # 24-6833**  
**Human Resource Information Systems and Related Products and Services**  
**Cobb County Procurement Services Department**  
**July 10, 2024**

REPRESENTATIVE NAME	COMPANY NAME & COMPLETE ADDRESS	PHONE (INCLUDE AREA CODE)	E-MAIL ADDRESS
Stephanie Brice	Cobb County Procurement Services	770-528-8400	procurementservices@cobbcounty.org
Tomek Kruszc	OMNIA Partners	615-431-1861	tomek.kruszc@omniapartners.com
Jim Ollerton	Inovium, LLC	951-663-2107	jim.ollerton@inovium.com
Mike Barnes	Alight Solutions	406-249-4031	mike.barnes.2@alight.com
Mark Munie	Avaap	314-517-5624	mark.munie@avaap.com
Ken Hayner	Cognizant	207-650-3020	khayner@collaborativesolutions.com
Cortney McCray	NeoGov	310-426-6304	cmccray@neogov.net
Keith Martin Brian Carter	Dayforce	678-848-1646	keith.martin@dayforce.com

**\*Please note that contact information provided to a government agency may be subject to public release as required by Georgia's open records law.**

## PRE- PROPOSAL CONFERENCE

**Sealed Proposal # 24-6833**  
**Human Resource Information Systems and Related Products and Services**  
**Cobb County Procurement Services Department**  
**July 10, 2024**

REPRESENTATIVE NAME	COMPANY NAME & COMPLETE ADDRESS	PHONE (INCLUDE AREA CODE)	E-MAIL ADDRESS
Bill Gaskill	Workday	202-257-0232	bill.gaskill@workday.com
Brian Coopman Sean O'Donnell	UKG	954-395-0654	brian.coopman@ukg.com sean.odonnell@ukg.com
Anthony Kitchens Michael Brown	ARK Global Partners LLC	404-236-9285 x110	tony@arkglobalpartners.com
Jessica Krattiger	CherryRoad Technologies	262-370-2929	jkrattiger@cherryroad.com
Tayiba Garcia	Infor Public Sector	404-931-8465	tayiba.garcia@infor.com
Nicole Blakely	The Joseph Group Advisory Services		info@tjgconsultants.com
Sanjay Rane	Humano Tech Inc	770-955-9285	sanjay.rane@humano.tech
John Guzak	KeldairHR	570-880-0219	john.guzak@keldairhr.com

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## PRE- PROPOSAL CONFERENCE

**Sealed Proposal # 24-6833**  
**Human Resource Information Systems and Related Products and Services**  
**Cobb County Procurement Services Department**  
**July 10, 2024**

REPRESENTATIVE NAME	COMPANY NAME & COMPLETE ADDRESS	PHONE (INCLUDE AREA CODE)	E-MAIL ADDRESS
Dhivya Balasundram Divya Chekuri	Monad Solutions, Inc.		dhivya.balasundram@monadsolutions.com dhivya.chekuri@monadsolutions.com

**\*Please note that contact information provided to a government agency may be subject to public release as required by Georgia's open records law.**



**Exhibit “C”**  
**UKG Public Sector MSA**

**Exhibit “C”**  
**UKG Public Sector MSA**

(also referred to as the UKG Kronos Systems, LLC Commercial Terms and Conditions)

These Public Sector Master Terms and Conditions (this “**Agreement**”) are made between the UKG entity, which may include UKG Kronos Systems LLC, Kronos SaaS HR Inc. or UKG Inc. (“**UKG**”) and the Public Agency signing the Order (“**Customer**”) which makes reference to the Master Agreement and sets forth the terms and conditions governing Customer’s use of UKG Software as a Services offerings, Equipment and other related Professional Training and Support Services that are stated on the Order or Statement of Work, including any attachments thereto. This Agreement is effective as of the date of the last Party to sign the Order (“**Effective Date**”). Capitalized terms used but not defined in this Agreement will have the meanings ascribed to them in the applicable Order or SOW.

**1. Services**

- 1.1 Subscription Services.** The Subscription Services will be identified in the Order. During the Initial Term and all applicable Renewal Terms defined in the Order, UKG will provide the Subscription Services to Customer and Customer may use such Subscription Services solely for its internal business purposes to manage the type and number of its employees subject to and conditioned on payment by Customer of all fees and Customer’s compliance with this Agreement, the Services Description, the Documentation, and the Order. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by UKG regarding future functionality or features.
- 1.2 Support Services.** UKG shall maintain a trained and knowledgeable staff capable of providing support for the Subscription Services. UKG will use commercially reasonable diligence to correct reproducible errors when reported to UKG and provide phone, email, or online support 24 hours a day / 7 days a week as set forth in the UKG Support Policy located in the applicable Services Description and also available at <https://www.ukg.com/saas-support-policies-and-services>. UKG will also provide scheduled and periodic enhancements and modifications to the Subscription Services, including bug fixes, to correct reproducible errors reported to UKG.
- 1.3 Professional Services.** UKG will provide the Professional Services listed in the Order, in accordance with the applicable Statement of Work. If Customer requests additional Services that were not previously identified on an Order or Statement of Work, then the Parties may need to execute additional Orders or Statements of Work.
- 1.4 Training Services.** In connection with a Subscription Service, UKG will provide (a) live virtual training facilitated by a knowledgeable instructor and delivered remotely via a published schedule intended for (i) the core team to help key functional and technical users make informed solution design and configuration decisions and to provide fundamental product knowledge, and (ii) an application and system administrator to

prepare functional and technical super users to perform their most common tasks in the solution; and (b) self-paced product training. Training Services outside the scope of this section shall be provided by UKG as described in the Order and Statement of Work.

## **2. Acknowledgements**

- 2.1 Reservation of Rights.** The Subscription Services are provided with a limited right to use and are not sold, and UKG reserves and retains all rights not expressly granted in this Agreement. UKG has and shall maintain sole and exclusive ownership of all rights, title, and interests in the Services and Documentation, and all modifications and enhancements thereof (including ownership of all trade secrets, copyrights, trademarks, brands, and other intellectual property rights pertaining thereto). There will be no “work for hire” created as part of the Services or any deliverables owned by Customer, and all works, customizations, models, and developments created by UKG shall be considered a part of the Services.
- 2.2 Use Restrictions.** Except as expressly provided in this Agreement, no other use of the Subscription Services is permitted. Customer may not, and may not cause or permit others to: (a) reverse engineer, disassemble, adapt, translate, or decompile the Subscription Services, including, without limitation, any third party components, or otherwise attempt to derive source code, trade secrets, or knowhow from the Subscription Services; (b) license, sell, transfer, assign, distribute, or outsource use of the Subscription Services or Documentation, or provide service bureau, data processing, or time sharing access to the Subscription Services, or otherwise use the Subscription Services to provide payroll or human resource record keeping for third parties; (c) create Internet “links” to the Subscription Services or “frame” or “mirror” the Subscription Services on any other server, or wireless or Internet-based device; (d) access or use the Subscription Services or Documentation to build or support, directly or indirectly, products or services competitive to UKG; (e) interfere with or disrupt the integrity or performance of any Subscription Services or any data contained therein; (f) attempt to gain unauthorized access to any Subscription Services or its related data, systems, or networks; or (g) remove or alter any proprietary notices or marks on the Subscription Services or Documentation.
- 2.3 Customer Feedback.** Customer has no obligation to provide UKG with any suggestion, enhancement request, recommendation, evaluation, correction, or other feedback about the Services (“**Feedback**”), but if it does, Customer grants to UKG and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, copy, modify, distribute, disclose, create derivative works, and make and incorporate such Feedback into its Services for any purpose. UKG has no obligation to incorporate or apply any Feedback to the Services.
- 2.4 Consent to Subcontract.** Customer hereby consents to UKG subcontracting Services to persons or companies qualified by UKG to provide Services on UKG’s behalf. UKG may also fulfill its obligations related to certain Services through its affiliates. UKG shall be responsible for the actions of its subcontractors and Affiliates.

**2.5 Compliance with Laws.** UKG shall comply with Applicable Laws in performing its obligations hereunder. Customer shall comply with Applicable Laws when using the Services and remains solely responsible for its compliance with Applicable Laws, including, but not limited to, with respect to the configuration and use of the Services and regardless of whether UKG provides assistance with Customer compliance matters. Customer acknowledges that the specific record retention requirements established under Applicable Laws relating to Customer are the responsibility of Customer and not UKG.

**2.6 Upgrades and Modifications.**

**2.6.1 Upgrades.** The Subscription Services may be upgraded or changed at any time as required by normal business conditions, provided that such changes will not materially diminish the functionality of the Subscription Services. Any changes to the Subscription Services will be applicable to all UKG customers of the Subscription Services and material changes will be deployed with reasonable advance notice.

**2.6.2 Modifications.** UKG may unilaterally revise its Master Services Agreement ("MSA") terms if they are not material. For revisions that will materially change the terms of the Agreement, the revised MSA terms must be incorporated into the Agreement which will be published. Any MSA terms or conditions unilaterally revised that are inconsistent with any material term or provision of this Agreement shall not be enforceable against the Customer, and the Customer shall not be deemed to have consented to them.

**2.7 Acceptable Use.** Customer will use the Subscription Services in full compliance with the Acceptable Use Policy attached as Exhibit 1 and which could be found in <http://www.ukg.com/acceptable-use-policy> ("**Acceptable Use Policy**"), which requires Customer not to (a) use, or encourage, promote, facilitate or instruct others to use, the Services for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive, (b) use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device, (c) interfere with or fail to cooperate with any UKG investigation of a security incident involving any UKG system, infrastructure or customer data, (d) make network connections to any users, hosts, or networks unless Customer has permission to communicate with them, and (e) use the Service to distribute, publish, send, or facilitate the sending of unsolicited mass e-mails or other messages.

**2.8 Access Credentials.** Except as otherwise provided herein, Customer will not provide any third party with access credentials to the Subscription Services and will safeguard and compel all users to safeguard the access credentials. Customer will be responsible for all acts and omissions of its users. Customer will notify UKG promptly if it learns of any unauthorized use of any access credentials or any other known or suspected breach of security. If Customer allows use of the Subscription Services by any of its departments or public agencies which Customer controls without requiring such department or public

agency to execute a separate Order with UKG to establish its own tenant environment, then Customer will be fully responsible and liable for all use and misuse of the Subscription Services by such Affiliate, and will fully cooperate with UKG in enforcing all of its rights to, interests in, and protection of the Services, including in seeking equitable remedies against any Affiliate that breaches this Agreement. Customer may also allow use of the Subscription Services by its legally bound contractors, provided such use is solely on Customer's behalf, is strictly in compliance with the terms and conditions of this Agreement, Customer at all times remains in control of and retains management over the Subscription Services, and Customer is liable for all breaches of this Agreement by such contractor. Customer authorizes UKG to provide such Customer contractors access to the Subscription Services.

- 2.9 Connectivity.** Customer is responsible for securing, paying for, and maintaining connectivity to the Subscription Services from Customer's location(s) via the internet, including any and all related hardware, software, third party services, and related equipment and components for such connectivity. Customer agrees that UKG will have no liability for such connectivity and Customer will not be excused from any of its obligations under the Agreement due to the quality, speed, or interruption of the communication lines from the Customer's location(s) to the internet.

### **3. Fees and Taxes**

UKG understands that Customer may be subject to Applicable Laws governing payment, including availability of funds, timing of payments, late payment interest penalties, and taxes.

- 3.1 Fees.** Customer will pay the fees on the payment terms and in the currency indicated in the Order. For each Order, the billing period of the fees will start on the Billing Start Date as set forth in the Order and will continue for the time period indicated as the Initial Term and all Renewal Terms, each as defined on the Order. Customer is responsible to pay for the Services for the entire Initial Term and each Renewal Term. UKG may increase the fees as set forth in the Order. The increased fees will be set forth in the applicable invoice. Except as otherwise specified in the Order and this Agreement (a) subscription fees are based on Subscription Services purchased and not time of actual usage; (b) minimum quantities purchased cannot be decreased during the relevant the then current Initial Term or Renewal Term; (c) additional quantities may be purchased; and (d) payment obligations are non-cancelable and fees paid are non-refundable.

- 3.2 Taxes.** *This section applies only if Customer has not provided with a valid tax exemption certificate authorized and honored by applicable taxing authorities that covers all Taxes.* The fees exclude, and Customer will be responsible for, all applicable sales, use, excise, withholding, VAT, and any other similar taxes, duties and charges of any kind imposed by any governmental entity in connection with the Services (excluding taxes based solely on UKG's income) ("Taxes").

**3.3 Late Payment.** Any invoices not reasonably disputed in writing within thirty (30) days from the date of receipt will be deemed undisputed and due. All undisputed invoices not paid within thirty (30) days after the date such amounts are due and payable may accrue interest at a rate up to the maximum allowable by applicable law. Customer will reimburse UKG for any additional reasonable cost incurred by UKG in connection with collecting any amounts payable under this Agreement. If Customer is more than thirty (30) days overdue in its payment of an undisputed amount due, then UKG reserves the right to suspend the Services provided under the applicable Order, but only until such payment is made to UKG and provided that UKG gives Customer at least ten (10) business days prior written notice of the overdue amount before UKG suspends the Services. Upon payment in full of all overdue amounts, UKG will restore the Services.

#### **4. Data, Security and Privacy**

**4.1 Ownership of Customer Data.** Customer shall retain ownership of all rights, title, and interests in and to Customer Data. No ownership rights in Customer Data will transfer to UKG. UKG will maintain backup copies of Customer Data as required to maintain and provide the Services, but Customer is responsible for maintaining backup copies of all data and information that Customer inputs into the Services or otherwise provides to UKG.

**4.2 Use of Customer Data.** Consistent with common Software as a Service (SaaS) industry practices and in accordance with Applicable Laws, UKG collects Customer Data to keep Services regularly up to date with appropriate market standards and security. All Customer Data collected is used solely for the purpose of providing and improving the Services and enhancing the customer experience with new functionalities.

**4.3 Collection of Personal Information.** Services may employ applications and tools that collect and process Personal Information that may be required by UKG to provide the requested Services or functionality included in or related to those Services. If Customer wishes to stop the collection and processing of Personal Information, Customer may need to uninstall or discontinue using certain Services.

**4.4 Data Privacy and Security.** Each Party agree to comply with Applicable Laws in its processing of Personal Information. UKG and its subprocessors will process Personal Information in accordance with UKG's DPA. All Customer Data will be secured and protected as set forth in the Technical and Organizational Measures of UKG's DPA.

#### **5. Confidentiality**

**5.1 Definition.** “**Confidential Information**” is any non-public information relating to a Party that is disclosed pursuant to any Order or this Agreement, and which reasonably should be understood by the recipient of such information to be confidential because of (a)

legends or other markings; (b) the circumstances of the disclosure; or (c) the nature of the information itself.

**5.2 Exceptions.** Information will not be considered Confidential Information if the information was (a) in the public domain without any breach of this Agreement; (b) disclosed to the receiving Party on a non-confidential basis from a source lawfully in possession of such Confidential Information and, to the knowledge of the receiving Party, is not prohibited from disclosing such Confidential Information to receiving Party; (c) released in writing from confidential treatment by disclosing Party; or (d) is independently developed by the receiving Party without use of or reference to the Confidential Information.

**5.3 Nondisclosure.** Except as expressly permitted in this section, neither Party will disclose the other Party's Confidential Information to any third party.

**5.4 Protection.** Each Party will secure and protect the Confidential Information of the other Party with a reasonable standard of care commensurate with the sensitivity of such Confidential Information and using precautions that are at least as stringent as it takes to protect its own Confidential Information of like nature, but no less than reasonable precautions.

**5.5 Use.** Each Party will only use the Confidential Information of the other Party as expressly permitted by or as required to exercise their rights, duties, and obligations under this Agreement.

**5.6 Disclosure Exceptions.** Confidential Information may be shared with and disclosed to (a) any Affiliate, subcontractor, or other third party who has a need to know to enable the receiving Party to exercise its rights or perform its obligations in connection with this Agreement and have non-disclosure obligations at least as stringent as the confidentiality provisions of this Agreement that apply to the Confidential Information; or (b) any court or governmental agency of competent jurisdiction, pursuant to a subpoena, order, civil investigative demand or similar process with which the receiving Party is legally obligated to comply, and of which the receiving Party notifies disclosing Party as required by a legal process, including in connection with any proceeding to establish a Party's rights or obligations under this Agreement (provided however that, when permitted by Applicable Law, a Party will give the other reasonable prior written notice so that the disclosing Party has an opportunity to contest any disclosure required by a legal process).

**5.7 FOIA/Public Disclosure Laws.** Notwithstanding any confidentiality obligations in the Agreement, UKG acknowledges that Customer may be compelled to disclose Confidential Information pursuant to the Federal Freedom of Information Act and any state equivalents or other open-records or public disclosure Applicable Laws. Customer may disclose such information to third parties upon written request to the extent compelled by such Applicable

Laws; provided that, prior to any such disclosure, Customer provides prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at UKG's cost, if UKG wishes to limit or contest the scope of the disclosure in whole or in part.

## **6. Warranty**

**6.1 Mutual Warranties.** Each Party hereby warrants that (a) it has the full right and authority to enter into this Agreement; and (b) the performance of its obligations and duties under this Agreement does not conflict with or result in a breach of any other agreement of such Party or any judgment, order, or decree by which such Party is bound.

**6.2 Subscription Services Warranty.** UKG warrants that the Subscription Services will substantially conform with the Documentation and that the functionality of the Subscription Services will not be materially diminished or adversely modified. In the event of a breach of the warranty described in this Section, as Customer's exclusive remedy and UKG's sole obligation, at UKG's cost, UKG will make commercially reasonable efforts to remedy such breach, provided that if UKG cannot substantially remedy such breach, then Customer may terminate the affected Subscription Services in accordance with Section 7.2.2. Customer agrees to report any non-conformance of the Subscription Services within thirty (30) days of its discovery and provide UKG with reasonable information and assistance to enable UKG to reproduce or verify the non-conforming aspect of the Subscription Services.

**6.3 Professional, Support, and Training Services Warranty.** UKG warrants that the Professional Services, Support Services, and Training Services will be performed by qualified personnel in a good and professional manner. In the event UKG breaches the warranty described in this Section, as Customer's exclusive remedy and UKG's sole obligation, UKG will reperform the deficient Professional, Support, or Training Service, at UKG's cost, provided that if UKG cannot substantially remedy such breach, then UKG will refund any fees prepaid by Customer for the affected Services. Customer must report any deficiencies in such Services, including Professional Services, within thirty (30) days of the completion of the Services.

**6.4 Disclaimer.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, UKG DISCLAIMS ALL OTHER WARRANTIES NOT SET FORTH IN THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE, IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, AND ANY PRODUCTS PROVIDED BY UKG. UKG DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SERVICES OR ANY



OTHER PRODUCT OR SERVICE PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND CUSTOMER MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED; HOWEVER, ANY SUCH WARRANTY RIGHTS EXTEND ONLY FOR THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS AGREEMENT (UNLESS AND ONLY TO THE EXTENT SUCH LAW PROVIDES OTHERWISE).

**6.5 Customer Warranty.** Customer warrants that it has all rights and required consents to provide Customer Data to UKG.

## **7. Term and Termination**

**7.1 Term of the Agreement.** The term of this Agreement commences on the Effective Date and continues until the stated term in each applicable Order or as otherwise terminated as permitted in this Agreement. At the expiration of the Initial Term, and at the expiration of each Renewal Term, each as indicated on the Order, the Services will automatically renew for the duration indicated on the Order as the Renewal Term.

## **7.2 Types of Termination**

**7.2.1 Non-renewal.** Either Party may terminate any Service identified in an Order upon at least sixty (60) days prior written notice to be effective at the expiration of the then current Initial Term or a Renewal Term.

**7.2.2 For Cause.** Either Party may terminate this Agreement, or any Service identified in an Order, if the other Party fails to perform any material obligation under this Agreement, and such Party is not able to cure the non-performance within thirty (30) days of written notice of such default with reasonably sufficient detail regarding the alleged breach, provided that UKG may immediately terminate or suspend Customer's access to the Services without notice if Customer is in breach of the "Use Restrictions" or "Confidentiality" sections of this Agreement, or the Acceptable Use Policy to prevent further harm. Either Party may immediately terminate this Agreement and all Orders if the other Party has a receiver or similar party appointed for its property, becomes insolvent, acknowledges its insolvency in any manner, ceases to do business, makes an assignment for the benefit of its creditors, or files a petition in bankruptcy. Other than as expressly permitted in this Agreement, or an Order, SOW, or Services Description, neither Party may terminate this Agreement and each Party remains fully obligated to the terms and conditions herein.

**7.2.3 For Non-Appropriation of Funds.** If Customer is a US Federal, State, or Local

governmental entity that relies on funding which is allocated at the federal, state and/or local level to fund the Service in the Agreement, then, to the extent required by law, the following will apply: Customer may terminate the Service in the event of a reduction in appropriations to any fund(s) from which UKG is to be paid for Services ordered under this Agreement but not yet delivered. Customer will provide a ninety (90) day prior written notice in the event of such termination to UKG and Customer agrees to pay for the products delivered and the services performed by UKG prior to the effective date of such notice. In the event of such termination, Customer shall not be entitled to a refund of pre-paid Services, such as the support fees. Customer acknowledges that by executing an Order Form for the Services, Customer has received fiscal appropriations for the amounts due during the Initial or Renewal Term (as applicable) as indicated on such Order.

**7.3 Effects of Termination.** The following terms apply if an Order is terminated for any reason:

**7.3.1 Fees.** All fees will be paid by Customer for amounts owed through the effective date of termination, and, if the Order is terminated for UKG's breach of the Agreement, any fees prepaid by Customer for the Service not rendered prior to the effective date of termination will be credited against Customer's account, with any remaining amounts refunded to Customer within thirty (30) days of the effective date of termination.

**7.3.2 Cessation of Services.** UKG will cease to provide the Services to Customer and Customer's right to use and access the Subscription Services will end as of the effective date of termination. If Customer requires access to the Subscription Services after the effective date of termination or transition assistance, such access and assistance will be subject to mutual agreement and additional fees, under a separate Order or SOW, and will be subject to the terms and conditions of this Agreement.

**7.3.3 Deletion of Customer Data.** UKG will delete Customer Data after Customer's rights to access the Subscription Services and retrieve Customer Data have ended, unless otherwise provided under this Agreement, a Services Description, Order, SOW, or another document. UKG will delete Customer Data in a series of steps and in accordance with UKG's standard business practices for destruction of Customer Data and system backups. UKG has no obligation to retain Customer Data and Customer Data may be permanently deleted as part of UKG's data management program(s) or practice(s), and in accordance with Applicable Laws.

**7.3.4 Confidential Information.** UKG and Customer will each return or destroy any Confidential Information of the other Party, with any retained Confidential Information remaining subject to this Agreement.

## 8. Indemnification

- 8.1 Claims Against Customer.** UKG will defend Customer and Customer's respective directors, officers, and employees, who are acting on behalf of Customer ("**Customer Indemnified Parties**"), from and against any and all third party Claims to the extent the Services or Documentation infringe or misappropriate any registered copyright or patent. UKG will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, damages, costs, or expenses (including, without limitation, reasonable attorneys' fees) actually awarded by a court of applicable jurisdiction to the extent resulting from such third party Claim, or as a result of UKG's settlement of such third party Claim.
- 8.2 Mitigation.** In the event that a final injunction is obtained against Customer's use of the Subscription Services by reason of infringement or misappropriation, or if in UKG's opinion, the use of the Subscription Services is likely to become the subject of a successful Claim of infringement or misappropriation, UKG (at its option and expense) will use commercially reasonable efforts to either (a) procure for Customer the right to continue using the Subscription Services as provided in the Agreement; or (b) replace or modify the Subscription Services so that they become non-infringing but remain substantively similar to the affected Subscription Services. Should neither (a) nor (b) be commercially reasonable, either Party may terminate the applicable Subscription Services and the rights granted hereunder upon written notice, at which time UKG will provide a refund to Customer of any fees paid by Customer for the infringing elements covering the period of their unavailability.
- 8.3 Exceptions.** UKG will have no liability to indemnify or defend Customer to the extent the alleged infringement or misappropriation of the Subscription Services is based on (a) use other than as expressly permitted by this Agreement or by UKG in writing; or (b) use in conjunction with any equipment, service, or software not provided by UKG, where the Subscription Services would not otherwise infringe, misappropriate, or become the subject of the third party Claim.
- 8.4 Qualifications.** Customer will provide written notice to UKG promptly after receiving notice of a third party Claim. If defense of such third party Claim is materially prejudiced by a delay in providing notice, UKG will be relieved from providing such indemnity to the extent of the delay's impact on the defense. UKG will have sole control of the defense of any indemnified third party Claim and all negotiations for its settlement or compromise, provided that UKG will not enter into any settlement which imposes any obligations on Customer without the prior written consent of Customer. Customer will cooperate fully (at UKG's request and expense) with UKG in the defense, settlement, and compromise of any such action. Customer may retain its own counsel at its own expense, subject to UKG's rights above.
- 8.5 Government Control of Defense.** If Customer is a US Federal, State, or Local governmental entity, then, to the extent required by law, the following will apply: Any

provision of the Agreement requiring UKG to defend or indemnify Customer is hereby amended, solely to the extent required by Applicable Laws, to provide that the U.S. Department of Justice (for a Federal Customer) or applicable State Attorney General's Office (for a SLED Customer) has the right to represent the respective Federal or SLED entity in litigation and other formal proceedings at its own cost. Subject to approval of the U.S. Department of Justice (for a Federal Customer) or applicable State Attorney General's Office (for a SLED Customer), if applicable, Customer shall tender defense of action to UKG upon request by UKG.

- 8.6** This "Indemnification" section states UKG's sole liability and Customer's exclusive remedy for all third party Claims and damages.

## **9. Limitations of Liability**

- 9.1 Monetary Cap.** DURING ANY TWELVE (12) MONTH CONTRACT TERM (BEGINNING ON THE EFFECTIVE DATE OF THE APPLICABLE ORDER), UKG'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS IN CONNECTION WITH ANY SERVICE PROVIDED TO CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNT PAID OR PAYABLE TO UKG DURING SUCH TWELVE (12) MONTH CONTRACT TERM FOR THE SERVICE GIVING RISE TO SUCH CLAIM(S).
- 9.2 Exclusion of Damages.** UKG WILL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES; FOR THE COST OF ACQUIRING SUBSTITUTE OR REPLACEMENT SERVICES; OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOST GOODWILL, OR LOST DATA RESULTING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT, HOWEVER CAUSED; OR ANY DAMAGES TO THE EXTENT CAUSED BY CUSTOMER'S DATA OR APPLICATIONS, CUSTOMER'S ALLOWANCE OF UNAUTHORIZED THIRD PARTY ACCESS, OR CUSTOMER'S INTRODUCTION OF MALICIOUS CODE.
- 9.3 Applicability of Limitations.** THESE LIMITATIONS APPLY FOR ANY REASON, REGARDLESS OF LEGAL THEORY AND THE REASON LIABILITY IS ASSERTED, EVEN IF UKG HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING IN THIS SECTION OR ELSEWHERE IN THIS AGREEMENT SHALL OPERATE TO EXCLUDE OR LIMIT THE LIABILITY OF ANY PARTY TO THE EXTENT SUCH LIABILITY CANNOT LAWFULLY BE SO LIMITED OR EXCLUDED UNDER APPLICABLE LAW. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SUCH

LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **10. General**

**10.1 Jurisdiction & Dispute Resolution.** This Agreement is governed by and is to be interpreted solely in accordance with the laws of the Commonwealth of Massachusetts, without regard to any conflict of law provision that would result in the application of a different body of law, and each Party agrees to submit to exclusive venue in the courts in Boston, Massachusetts in any dispute arising out of or relating to this Agreement. The United Nations Commission on International Trade Law, the United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act (UCITA) will not apply to this Agreement.

**10.2 Federal Government Use Provision.** If the ultimate end user is a U.S. federal government entity, then it acknowledges that the Subscription Services, Equipment and Documentation consist of "commercial services" and "commercial products," as defined in FAR 2.101, consisting of "commercial computer software," "commercial computer software documentation" and "technical data" as these terms are used in FAR 12.211-12.212 and in DFARS 227.7202, as applicable. All such government end users will comply with this Agreement while using Subscription Services, Equipment and Documentation. the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Subscription Services, Equipment and Documentation shall be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If such Customer needs any additional rights, it must negotiate a mutually agreed addendum to these Agreement specifically granting those rights.

**10.3 Export.** Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the generality of the foregoing, Customer represents that it is not on any U.S. government denied- party list and it shall not make the Services available to any person or entity that (a) is located in a country that is subject to a U.S. government embargo; (b) is listed on any U.S. government list of prohibited or restricted parties; or (c) is engaged in activities directly or indirectly related to proliferation of weapons of mass destruction.

**10.4 UKG's Employer Obligations.** UKG is responsible for compliance with all requirements and obligations relating to its employees under all Applicable Laws including, but not limited to, employer's obligations under laws relating to: payroll, income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime;

minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

**10.5 Human Trafficking and Modern Slavery.** UKG shall comply with all Applicable Laws regarding slavery and human trafficking of the state, province, and country/countries in which they are performing the Services and doing business, including, but not limited to, the California Transparency in Supply Chains Act and the United Kingdom Modern Slavery Act.

**10.6 E-Verify.** To the extent required by Applicable Laws, UKG agrees to utilize the U.S. Department of Homeland Security's E-Verify system, to verify the employment eligibility of all persons assigned by UKG to perform work in the United States pursuant to this Agreement.

**10.7 Severability and Waiver.** The invalidity or illegality of any provision in this Agreement will not affect the validity of any other provision. All unaffected provisions remain in full force and effect. The waiver of any breach of this Agreement will not constitute a waiver of any subsequent breach or default and will not negate the rights of the waiving Party.

**10.8 Surviving Provisions.** Provisions in this Agreement which by their nature are intended to survive in the event of a dispute or because their obligations continue past termination of the Agreement, including provisions relating to acknowledgements, reservation of rights, use restrictions, fees, confidentiality, limits of liability, indemnification, and termination, will so survive.

**10.9 Assignment.** This Agreement cannot be assigned by a Party, whether by operation of law or otherwise, without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement in its entirety (including all Orders and Statements of Work) as part of a merger, acquisition, transfer, or sale of all or substantially all of its assets, stock or business, including to an Affiliate, so long as the assignee agrees to be bound by all of the terms and conditions of this Agreement, the Orders, and Statements of Work. In the event of such an assignment, the non-assigning party shall be entitled to request from the assignee reasonable information to demonstrate that the assignee has the necessary resources and expertise to provide the Service. In no event shall Customer have the right to assign the Agreement to a direct competitor of UKG. This Agreement shall be binding on and inure to the benefit of all permitted predecessors, successors, and assigns of each Party.

**10.10 Force Majeure.** If an unforeseeable event reasonably beyond the control of either of the Parties arises to prevent a Party from performing its obligations under this Agreement, including, but not limited to, acts of war, terrorism, uprising, acts of nature like earthquakes or floods, measures of any governmental authority in response to pandemics, epidemics or other viral or bacterial outbreaks, civil unrest, embargoes, riots, sabotage,

labor shortages, changes in laws or regulations, the failure of the internet or communications via common networks, failure of payment transfer mechanisms (but not lack of funds to make payments), power or system failure, or a delay in transportation (collectively “**Force Majeure**”), each Party will be excused from performance of its obligations under this Agreement, for the duration of the Force Majeure affecting such Party, provided that the affected Party will use reasonable efforts to mitigate the impact of the Force Majeure. Notwithstanding the foregoing, UKG remains obligated to provide disaster recovery portions of the Services to the extent not also prevented by the Force Majeure.

**10.11      Publicity.** UKG will not publicize matters relating to Customer’s use of the Services without Customer’s prior consent. Despite the foregoing, UKG may identify the Customer as a UKG customer and use Customer’s name, trademark, and logo, in any and all media, including without limitation, UKG’s advertising literature, marketing materials, websites, and lists of UKG’s customers; however, such usage shall not be classified as an advertisement but only identification as an entity who receives the Service from UKG. For the avoidance of doubt, this section does not prohibit UKG from referencing Customer’s name in a verbal format.

**10.12      Notice.** When either Party needs to provide notification or consent under this Agreement, those notices and consents must be in writing and considered delivered upon actual receipt. All notices to UKG must be sent to the following: [UKGLegal@ukg.com](mailto:UKGLegal@ukg.com) with a copy to EVP Chief Legal Officer, UKG Inc., 900 Chelmsford Street, Lowell, MA 01851. All notices to Customer will be sent to the contact listed on the applicable Order. Notices sent elsewhere will not be considered effective under this Agreement. Any cure period required under this Agreement will begin on the date the notice is received.

**10.13      eSignature.** Each Party agrees that an eSignature (or a facsimile signature by the authorized representative) is evidence of acceptance of a valid and enforceable agreement.

**10.14      No Third Party Beneficiaries.** The provisions of this Agreement are for the sole benefit of the Parties and they will not be construed as conferring any rights on any third party nor are there any third party beneficiaries to this Agreement.

**10.15      Titles and Headings.** Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

**10.16      Relationship of the Parties.** The Parties are independent contractors. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties or constitute any Party to be the agent of the other Party for any purpose.

**10.17 Entire Agreement.** This Agreement (and any information in referenced herein, including in an exhibit, schedule, attachment, annex, or at any URL) along with any corresponding Order, SOW, and Services Description constitute the entire agreement between the Parties pertaining to each Order. This Agreement supersedes all prior and contemporaneous representations, negotiations, and communications between the Parties relating to the Services and its subject matter. Customer acknowledges that it has not relied upon any such representations, negotiations, and communications, and waives any rights or claims arising from such representations, negotiations, and communications, including any claims for fraud or misrepresentation. This Agreement may only be amended in writing signed by each of the Parties. If Customer uses its own purchase order or similar document, any terms or conditions in such purchase order are null and void. In the event of a conflict between the provisions contained in this Agreement and those contained in an Order, SOW, or Services Description, the following order of precedence shall apply: (1) the Order, (2) this Agreement, (3) Services Description, and (4) the SOW.

## **11. Definitions**

- 11.1 “Affiliates”** means, as to UKG, those entities that are directly or indirectly controlled by UKG Inc.; and as to Customer, those Customer entities that directly or indirectly control, are controlled by, or are under common control with Customer. “Control” (in this context) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made through the ownership of the majority of its voting or equity securities, contract, or otherwise.
- 11.2 “Applicable Law(s)”** means all laws, codes, legislative acts, regulations, ordinances, administrative rules, rules of court, and court orders applicable to a Party’s respective business.
- 11.3 “Claim(s)”** means any and all notices, charges, claims, proceedings, actions, causes of action and suits.
- 11.4 “Customer Data”** means all content, information, and data Customer inputs into the Subscription Services, including but not limited to Personal Information.
- 11.5 “Documentation”** means the written specifications for the Subscription Services or other published online by UKG on its community pages accessible at <https://www.ukg.com/support> and <https://library.ukg.com/>, such as user manuals and administrator guides, as well as the Services Descriptions.
- 11.6 “DPA”** means UKG’s U.S. Data Processing Agreement located at <https://www.ukg.com/us-dpa>.
- 11.6 “Order”** means an order form, agreed by both Parties, which is subject to this Agreement or otherwise references this Agreement, setting out, among other things, the type and quantity of employees that may be managed in the Subscription Services, the term of the



Order, price and payment terms of the Services to be provided by UKG, and the fees to be paid by Customer.

**11.7 “Party” or “Parties”** means UKG or Customer, or both, as the context dictates.

**11.8 “Personal Information”** means Customer Data related to a Data Subject as defined under U.S Privacy Laws, including “personal information” as defined under the California Consumer Privacy Act (“CCPA”) and any similar terms, such as “personally identifiable information”.

**11.9 “Professional Services”** means the deployment, launch, configuration, implementation, integration, delivery, consulting, managed, and other similar services provided hereunder.

**11.10 “Services”** means the (a) Subscription Services; (b) Support Services; (c) Professional Services; (d) Training Services; and (e) other services or offerings as set forth in an Order.

**11.11 “Services Description”** means the supplemental terms applicable to a Subscription Service or other offerings located at <http://www.ukg.com/services-descriptions>.

**11.12 “Statement of Work” or “SOW”** means a document executed by both Parties, which is subject to this Agreement and the applicable Order or otherwise references this Agreement, detailing the scope of Professional Services or Training Services, the associated fees, and other applicable terms.

**11.13 “Subscription Services”** means those UKG software-as-a-service (“SaaS”) applications set forth on the Order, including the UKG data accessible therein, and made available to Customer via a hosted multi-tenant environment to use on a subscription basis.

**11.15 “Support Services”** means support and maintenance services provided by UKG for the Subscription Services, as described in this Agreement.

**11.16 “Training Services”** means in person and virtual instructor-led training and courses, including online, on-demand, in-product, and on-site courses provided by UKG.

**11.17 “UKG”** means UKG Kronos Systems, LLC., a Massachusetts limited liability company with its principal place of business at 900 Chelmsford Street, Lowell, MA 01851.

**Exhibit “C-1” UKG Services Descriptions**

**Exhibit “C-1” UKG Services Descriptions**

**UKG Extensions for Health Care Services Description**

Exhibit 1 Cloud Services for Healthcare Extension

Exhibit 2 Security and Disaster Recovery

Exhibit 3 Service Level Agreement

# Exhibit "C-1" UKG Services Descriptions

## UKG Extensions for Health Care Services Description

### Extensions For Healthcare Services Description

#### 1. Services Description

This services description ("**Services Description**") applies to UKG's provision of the Workforce Forecast Manager for Healthcare SaaS, Workforce Workload Manager for Healthcare SaaS, Workforce Target Intelligence for Healthcare SaaS, the Workforce Extensions for Healthcare Bundle, WF Extensions for Healthcare and related services in UKG's hosting environment (the "**Subscription Services**" or "**Healthcare Extensions**") when set forth on the Order. Subscription Services shall be delivered by means of Customer's permitted access to the infrastructure hosting the Subscription Services. This Services Description is subject to and governed by the Order and the corresponding agreement that governs Customer's use of UKG Workforce Management and other Services (collectively, the "**Agreement**").

#### 2. Definitions

"**Cloud Services for Healthcare Extensions**" means those services described in **Exhibit 1**, the "Cloud Services for Healthcare Extensions".

"**Encrypt**" or "**Encryption**" means to cryptographically protect data using methods such as symmetric encryption algorithm, asymmetric encryption algorithm or a one-way hashing algorithm.

"**Encryption Gateway Tool**" means the WF Extensions for Healthcare Encryption Gateway for UKG Cloud tool described in section 5.

"**HIPAA**" means the Health Insurance Portability & Accountability Act of 1996, P.L. 104-191, as amended from time to time, together with its implementing regulations promulgated under HIPAA and under the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), by the U.S. Department of Health and Human Services, including, but not limited to, the Privacy Rule, the Security Rule and the Breach Notification Rule, as amended from time to time.

"**PHI**" means Protected Health Information as defined by HIPAA.

"**Solution**" means the combination and use of the Healthcare Extensions working with the Encryption Gateway Tool.

#### 3. Data Security

As part of the Subscription Services, UKG shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data as described in **Exhibit 2** herein. These terms, as well as the Business Associate Addendum that the parties may enter into, replace any Data Security and Privacy terms outlined in the Master Services Agreement or data protection addendum for the purposes of the Healthcare Extensions.

#### 4. UKG Responsibilities

UKG offers the Service Level Agreement and associated SLA Credits attached hereto and incorporated herein by reference as **Exhibit 3** for the Subscription Services.

#### 5. Encryption Gateway

##### 5.1 Description of the Encryption Gateway Tool

- (a) As part of Subscription Services, UKG licenses to Customer the right to install and use the WF Extensions for Healthcare Encryption Gateway for UKG Cloud tool ("**Encryption Gateway Tool**") in accordance with the terms of this Services Description. The Encryption Gateway Tool will Encrypt PHI before it is transmitted to the UKG Cloud and it will un-Encrypt the PHI when it is extracted from the UKG Cloud in accordance with the Encryption Gateway Tool documentation. It shall be Customer's responsibility to install and apply updates to the Encryption Gateway Tool in accordance with Section 5.2 below.
- (b) UKG will deliver the Encryption Gateway Tool by giving Customer access to the secure Customer portal and such tool shall be available for download and to be installed by Customer, on Customer's server and behind its firewall at its facility location. The Encryption Gateway Tool will be under the Customer's control at all times and Customer shall install updates to the Encryption Gateway Tool when such updates are made available by UKG. The Encryption Gateway Tool is licensed to Customer concurrently with the Healthcare Extensions and upon termination or expiration of Subscription Services, Customer's right to use the Encryption Gateway Tool shall also terminate. Customer agrees to uninstall the Encryption Gateway Tool upon termination of Customer's right to use the Subscription Services.
- (c) The Encryption Gateway Tool must be installed outside of the UKG Cloud, on a server that is under Customer's control, therefore, the parties agree that the Health Extensions SLA referenced in Exhibit 3 and the UKG Cloud as detailed in this Services Description shall not apply to the Encryption Gateway Tool.

## 5.2 Customer's Responsibilities

Customer agrees to:

- (a) install, maintain, and use the Encryption Gateway Tool as part of the Subscription Services in accordance with the Encryption Gateway Documentation. Customer acknowledges that its failure to immediately apply updates to the Encryption Gateway Tool when such updates become available may: (i) compromise the security of Customer Data, including, Personal Data and PHI; and (ii) result in incompatibility between the Healthcare Extensions and the Encryption Gateway Tool, which could cause failures in Encrypting and un-Encrypting data, and affect the scope of the Subscription Services provided by UKG and its ability to adhere with its compliance programs, including those verified by the independent auditor report (i.e., SOC reports).
- (b) install and maintain the Encryption Gateway private key per the Encryption Gateway Documentation, and not share the Encryption Gateway private key with any third party who does not have a need to know, including not sharing the Encryption Gateway private key with UKG. Customer acknowledges that should Customer lose the key, any encrypted data will remain encrypted.
- (c) enter and maintain PHI only in the fields defined in the Healthcare Extensions Documentation; and to only send PHI data (e.g., screen shots containing PHI) to UKG by means of secure support channels for such data.
- (d) use unique user ID and passwords for all users of Healthcare Extensions.
- (e) configure Healthcare Extensions user's account to meet Customer's HIPAA policy requirements for complexity, length duration and lockout.
- (f) determine user access/authorization to the application level of the Solution and assure that the level of access and the user assigned roles and permission are appropriate, which includes periodic application level logical access review.
- (g) review application logs to meet Customer's HIPAA compliance program.
- (h) immediately notify UKG in the event Customer discovers a security issue with the Solution.
- (i) provide UKG resources with application-level accounts as reasonably needed to support the Healthcare Extensions, and not unreasonably withhold such access.

**Exhibit 1**  
**Cloud Services for Healthcare Extensions**

Cloud Offering	
<p><b>Sub-processor for Healthcare Extensions:</b></p> <p>Cyxtera Technologies, Inc. BAC Colonnade Office Towers 2333 Ponce De Leon Blvd, Suite 900 Coral Gables, FL 33134 USA</p> <p><b>NOTE: Healthcare Extensions are deployed in datacenters in the USA ONLY.</b></p>	<p>No data processed; co-location services only</p>
<p><b>Environments:</b></p> <p>One standard Production and one Non-Production (Development) environment. Excludes Encryption Gateway software running at a location outside of the UKG Cloud, on a server that is in customer's control.</p>	<p>Included. Additional non-production environments are available for additional fees.</p>
<p><b>Environment restoration:</b></p> <p>Restore of Production environment to one Non-Production environment once per week. Customer is responsible for requesting data to be moved from the Production environment to the Non-Production environment and for the contents of the data moved from the Production environment to the Non-Production environment. Excludes Encryption Gateway software running at a location outside of the UKG Cloud, on a server that is in customer's control.</p>	<p>Included.  More frequent restores or additional environments will be subject to additional time and material fees.</p>
<p><b>Connectivity to Service:</b></p> <p>Customer's users connect to applications via secure TLS connection over the internet. Cooperative efforts with customer IT staff may be required to enable access. UKG will assist with validating site connectivity but assumes no responsibility for customer internet connection or ISP relationships. UKG related Internet traffic cannot be filtered by proxy or caching devices on the client network. Exclusions must be added for the fully qualified domain names and public IP addresses assigned to the environments in the UKG Cloud. Applicable ports must be opened from customer network as described in product documentation.</p>	<p>Included</p>
<p><b>Operating System and Database Software Management:</b></p> <p>Subscription Service of critical security patches, service packs and hot-fixes; maintenance of servers. Excludes Encryption Gateway software running at a location outside of the UKG Cloud, on a server that is in customer's control.</p>	<p>Included</p>
<p><b>Server Maintenance:</b></p> <p>Repair and replacement of defective or failed hardware and the installation of hardware upgrades. Excludes Encryption Gateway software running at a location outside of the UKG Cloud, on a server that is in customer's control.</p>	<p>Included</p>
<p><b>Subscription Service Updates:</b></p> <p>Services to perform technical tasks required to apply Subscription Service service packs, legislative updates (if applicable), point releases and version upgrades. Excludes Encryption Gateway software running at a location outside of the UKG Cloud, on a server in customer's control.</p>	<p>Included</p>

Cloud Offering	
<b>Backups:</b> Customer data is backed up daily. Database backups are replicated via encrypted connections to a second UKG Cloud datacenter. Backups are retained for the prior 28 days on a rotating basis. All historical employee and configuration data is stored in the rotating backups.  Excludes Encryption Gateway software running at a location outside of the UKG Cloud, on a server in customer's control.	Included

## EXTENSIONS for HEALTHCARE EXTENSIONS

### Cloud Guidelines and Assumptions

Assumption
Estimated availability of Production server hardware in UKG Cloud is approximately 30 days after the Order Form is processed.
Customer agrees to receive automatic updates to the Subscription Services.
Subscription Services will support English only.
Customer agrees not to conduct security testing, which includes but is not limited to penetration testing and vulnerability scanning.
Customer agrees not conduct any sort of automated or manual performance testing of the Service.
Retention policies must be configured in the Subscription Services. Setting retention policies will ensure that unnecessary system data (e.g. temp files, deleted records, empty rows, etc.) is routinely purged from the system and will help in managing database growth. Additionally, application audit log will be retained for 30 days.
Customer will be required to sign a go-live milestone document confirming customer has completed its testing and is ready to go live with the UKG Healthcare Extensions.

## EXTENSIONS for HEALTHCARE EXTENSIONS

### Upgrade Services

The Subscription Services include services for UKG to execute tasks to apply point releases and version upgrades to customer's Subscription Services. Subscription Services are limited to those tasks which apply these updates to the Subscription Services. Subscription Services related to upgrade of Encryption Gateway Environment and Encryption Gateway software running at a location outside of the UKG Cloud on a server in customer's control are not included.

The table below reflects the included/excluded upgrade tasks.

Planning Phase	
Customer/ UKG Introduction Call – up to 30 minutes	Included
Technical readiness & architecture review – UKG Cloud Environment	Included
Technical readiness & architecture review – Encryption Gateway environment	Not Included
Assessment Phase	
Assessment of Interface Upgrades to UKG Dimensions	Included
Assessment of new features or changes to configuration	Not included
Assessment of customs, custom interfaces and custom reports and development activities related thereto	Not included
Solution Upgrade / Build Phase	
One (1) restore of Production database to Non-Production environment for the purpose of upgrade testing. Additional restores, if requested, shall be subject to additional time and material fees.	Included
Upgrade Non-Production and Production environments to new point release or version.	Included
Upgrade of interface integration(s) to UKG Dimensions per features in product documentation, if applicable.	Included
Upgrade of integrations beyond integration to UKG Dimensions per features in product documentation.	Not Included

Upgrade of any customs, custom interfaces and custom reports and development activities related thereto.	Not Included
Configuration of new features or functionality or changes to existing configuration	Available for Purchase
Upgrade of Encryption Gateway environment and Encryption Gateway software running at a location outside of the UKG Cloud, on a server in customer's control.	Not Included
<b>Test &amp; Certify Phase</b>	
User acceptance testing (UAT) of upgraded environments, interfaces, custom reports, new features, etc.	Not Included
Develop customer-specific test cases	Not Included
Sign-off on upgraded Non-Production and Production Environments	Customer
<b>Deploy &amp; Support Phase</b>	
Deployment Readiness Call – up to 30 minutes	Included

*Note that new feature configuration, project management services, other Professional and Educational Services and training are not included as part of Upgrade Subscription Services, but may be purchased independently, if desired.*

*If not specifically noted, the customer should assume responsibility of the task and/or deliverable.*



**EXHIBIT 2**  
**Security and Disaster Recovery**

<p><b>Security:</b></p> <p>UKG maintains a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts (AICPA) Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). The UKG Private Cloud is evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The UKG Private Cloud is located in data centers that undergo SSAE 18 examinations. Management access to the UKG Private Cloud is limited to authorized UKG support staff and customer authorized integrations. The security architecture has been designed to control appropriate logical access to the UKG Private Cloud to meet the Trust Services Principles of Security, Availability and Confidentiality. The Subscription Services provide the customer with the ability to configure application security and logical access per the customer's business processes. Additionally, an independent auditor provides an opinion on the design and operating effectiveness of controls to meet the security requirements of the Health Insurance Portability and Accountability Act Security Rule, which is available upon written request.</p> <p>In the event the customer identifies a security issue, the customer will notify UKG. For security purposes, customers are restricted from accessing the desktop, file systems, databases and operating system of the environments.</p> <p>Customer agrees not to upload payment card information, as the service is not certified for PCI DSS.</p>	<p>Included</p>
<p><b>Disaster Recovery Services:</b></p> <p>Customer environment and all customer data in the UKG Cloud are replicated to a secondary UKG Cloud data center. Disaster Recovery Services provide a Recovery Point Objective (RPO) of 12 hours and a Recovery Time Objective (RTO) of 24 hours.</p> <p>Any issues arising out of the Disaster Recovery event due to customer configuration/customization and/or customer third party software outside of the UKG Cloud is the responsibility of the customer to resolve.</p> <p>Excludes Encryption Gateway Tool running at a location outside of the UKG Cloud, on a server in customer's control.</p>	<p>Included</p>

**EXHIBIT 3**  
**Healthcare Extensions**  
**SERVICE LEVEL AGREEMENT (SLA)**

**Service Level Agreement:** The Subscription Services, in a production environment, are provided with the service levels described in this Exhibit A. SLAs are only applicable to production environments. SLAs will be available upon Customer's signature of UKG's Go Live Acceptance Form for Customer's production environment.

**99.75% Subscription Services Availability**

**Actual Subscription Services Availability %** = (Monthly Minutes (MM) minus Total Minutes Not Available (TM)) multiplied by 100) and divided by Monthly Minutes (MM), but not including Excluded Events

**SLA Credit Calculation:** An Outage will be deemed to commence when the Subscription Services are unavailable to Customer in Customer's production environment hosted by UKG and end when UKG has restored availability of the Subscription Services. Failure to meet the 99.75% Subscription Services Availability SLA, other than for reasons due to an Excluded Event, will entitle Customer to a credit as follows:

If, due to an Outage, the Subscription Service does not maintain 99.75% Availability, Customer is entitled to a credit to Customer's monthly invoice for the affected month, such credit to be equivalent to 3% of Customer's monthly PEPM Fees for every 1% of Availability below 99.75%, but in no event to exceed 100% of Customer's monthly PEPM Fees.

**"Outage"** means the accumulated time, measured in minutes, during which Customer is unable to access the Subscription Services for reasons other than an Excluded Event.

**"Excluded Event"** means any event that results in an Outage and is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by UKG, including without limitation Customer Data, failures or malfunctions resulting from circuits provided by Customer, any inconsistencies or changes in Customer's source environment, including either intentional or accidental connections or disconnections to the environment; (c) Force Majeure events; (d) expected downtime during the Maintenance Periods described below; (e) any suspension of the Services in accordance with the terms of the Agreement to which this Exhibit A is attached; (f) the unavailability of required Customer personnel, including as a result of failure to provide UKG with accurate, current contact information; or (g) using an Subscription Services in a manner inconsistent with the Documentation for such Subscription Services.

**"Maintenance Period"** means scheduled maintenance periods established by UKG to maintain and update the Subscription Services, when downtime may be necessary, as further described below. The Maintenance Period is used for purposes of the SLA Credit Calculation; UKG continuously maintains the production environment on a 24x7 basis to reduce disruptions.

**Customer Specific Maintenance Period**

1. Customer will choose one of the following days of the week for their Maintenance Period: Saturday, Sunday, Wednesday or Thursday.
2. UKG will use up to six (6) hours in any two (2) consecutive rolling months (specifically: January and February; March and April; May and June; July and August; September and October; November and December) to perform Customer Specific Maintenance, excluding any customer requested Subscription Services updates. Downtime in excess of these six (6) hours will be deemed to be an Outage.
3. Customer Specific Maintenance will occur between 12am-6am EST.
4. Excluding any customer requested Subscription Services updates, UKG will provide notice for planned downtime via an email notice to the primary Customer contact so planning can be facilitated by Customer.
5. Customer Specific Maintenance Windows also include additional maintenance windows mutually agreed upon by Customer and UKG.
6. In absence of instruction from Customer, UKG will by default perform Maintenance in the time zone where the Data Center is located.

**Non-Customer Specific Maintenance Period**

UKG anticipates non-Customer Specific Maintenance to be performed with no or little (less than three hours per month) Customer downtime. If for any reason non-Customer Specific Maintenance requires downtime, UKG will provide as much notice as reasonably possible of the expected window in which this will occur.

Downtime in excess of three (3) hours per month for Non-Customer Specific Maintenance will be deemed to be an Outage.

**"Monthly Minutes (MM)"** means the total time, measured in minutes, of a calendar month commencing at 12:00 am of the first day of such calendar month and ending at 11:59 pm of the last day of such calendar month.

**"Total Minutes Not Available (TM)"** means the total number of minutes during the calendar month that the Subscription Services are unavailable as the result of an Outage.

**Reporting and Claims Process:** SLA Credits will not be provided if: (a) Customer is in breach or default under the Agreement at the time the Outage occurred; or (b) the Outage results from an Excluded Event.

UKG will provide Customer with a Subscription Services Availability report on a monthly basis for each prior calendar month. Within sixty (60) days of receipt of such report, Customer must request the applicable SLA Credit by written notice to UKG. Customer waives any right to SLA Credits not requested within this time period. All performance calculations and applicable SLA Credits are based on UKG records and data unless Customer can provide UKG with clear and convincing evidence to the contrary.

The Service Level Agreement in this Exhibit, and the related SLA Credits, apply on a per production environment basis. For the avoidance of doubt, Outages in one production environment may not be added to Outages in any other production environment for purposes of calculating SLA Credits.

Customer acknowledges that UKG manages its network traffic in part on the basis of Customer's utilization of the Subscription Services and that changes in such utilization may impact UKG's ability to manage network traffic. Therefore, notwithstanding anything else to the contrary, if Customer significantly changes its utilization of the Subscription Services than what is contracted with UKG and such change creates a material and adverse impact on the traffic balance of the UKG network, as reasonably determined by UKG, the parties agree to co-operate, in good faith, to resolve the issue.

**Exhibit “C-1” UKG Services Descriptions**  
**UKG Great Place to Work Services Description**