



## PURCHASING

Purchasing

248-858-0511 | purchasing@oakgov.com

Buyer: WKP

CONTRACT NUMBER: 009779

Event # 005310

## CONTRACT between the COUNTY OF OAKLAND and CONTRACTOR

Not To Exceed Amount: \$200,000.00		Effective Date: 11/1/2022	Expiration Date: 10/31/2025
Contract Description:	Physical Records Management System - P		
Contractor Information:		Contract Administrator:	
FILETRAIL INC 2505 E 6th Street Ste D Austin, TX 78702 Vendor No: 30098		Harrold Westervelt, CEO FILETRAIL INC hwestervelt@filetrail.com	
Buyer and Purchasing Office Information:		Contract Administrator Oakland County Using Department:	
Buyer: Wendy Pucher OAKLAND COUNTY 2100 Pontiac Lake Rd 41W Waterford, MI 48328 248-858-0511 purchasing@oakgov.com		Mike Timm OAKLAND COUNTY IT 1200 N. Telegraph Rd. Building 49 West Pontiac, MI 48341 248/858-0857 timmmr@oakgov.com	

The County and the Contractor may be referred to individually as a "Party" or collectively as the "Parties". The Parties agree to the attached terms and conditions:

**FOR THE CONTRACTOR:**

SIGN: Harold Westervelt  
Harold Westervelt (Nov 2, 2022 09:11 EDT)

**FOR THE COUNTY:**

SIGN: Michael R Timm  
Michael R Timm (Nov 2, 2022 09:22 EDT)  
Contract Administrator

SIGN: Scott N. Guzzy  
Scott N. Guzzy (Nov 2, 2022 09:39 EDT)

Scott N. Guzzy, CPPO, MBA, Purchasing Administrator

cjs

This Contract is organized and divided into the following Sections for the convenience of the Parties.

- Section 1. Contract Definitions
- Section 2. Contract Term and Renewal
- Section 3. Contract Administration and Amendments
- Section 4. Contract Termination
- Section 5. Scope of Deliverables and Financial/Payment Obligations
- Section 6. County's G2G Marketplace Administration
- Section 7. Contractor's Warranties and Assurances
- Section 8. Liability
- Section 9. Insurance and Bond Requirements
- Section 10. Intellectual Property
- Section 11. Confidential Information
- Section 12. County Data
- Section 13. Information Technology Standards
- Section 14. General Terms and Conditions

## **§1. CONTRACT DEFINITIONS**

The following words when printed with the first letter capitalized shall be defined and interpreted as follows, whether used in the singular or plural, nominative or possessive case, and with or without quotation marks:

- 1.1. **"Amendment"** means any change, clarification, or modification to this Contract.
- 1.2. **"Business Day"** means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding County designated holidays.
- 1.3. **"Claims"** means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the County or for which the County may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation,

facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.

- 1.4. **“Confidential Information”** means all information and data that the County is required or permitted by law to keep confidential, which includes computer software, cybersecurity assessments and plans and measures to protect the County’s security.
- 1.5. **“Contract”** means this document and any other documents expressly incorporated herein.
- 1.6. **“Contractor”** means the entity or person listed under “Contractor” on the first page of this Contract and Contractor Employee.
- 1.7. **“Contractor Employee”** means any employee; officer; director; member; manager; trustee; volunteer; attorney; licensee; contractor; subcontractor; independent contractor; subsidiary; joint venture; partner or agent of Contractor; and any persons acting by, through, under, or in concert with any of the above, whether acting in their personal, representative, or official capacities. Contractor Employee shall also include any person who was a Contractor Employee at any time during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.8. **“Contract Documents”** mean the following documents, which this Contract includes and incorporates:

**Exhibits (Applicable if Checked)**

- 1.8.1. ☒ Exhibit I: Insurance Requirements
- 1.8.2. ☐ Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements)
- 1.8.3. ☐ Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information)
- 1.8.4. ☐ Exhibit IV: Requirements for Contractors with Access to Criminal Justice Information
- 1.8.5. ☐ Exhibit V: Federally Funded Contract Requirements
- 1.8.6. ☒ Exhibit VI: Software License(s)
- 1.8.7. ☒ Exhibit VII: License for Use of County Servicemark
- 1.8.8. ☒ Exhibit VIII: Acknowledgement of Independent Employment Status
- 1.8.9. ☒ Exhibit IX: Scope of Contractor Deliverables/Financial Obligations

- 1.9. **"County"** means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and "County Agents" as defined below.
- 1.10. **"County Agent"** means any elected and appointed officials; directors; board members; council members; commissioners; employees; and volunteers of the County; whether acting in their personal, representative, or official capacities. "County Agent" shall also include any person who was a "County Agent" anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and in that capacity.
- 1.11. **"County Data"** means information or data collected, used, processed, stored, or generated in any format, by or on behalf of the County, in connection with the Deliverables, which shall include, but not be limited to: (a) personal health information (PHI) as defined under the Health Insurance Portability and Accountability Act (HIPAA) and Exhibit II, (b) personally identifiable information (PII) as defined in Exhibit III, and (c) Criminal Justice Information defined in Exhibit IV if the Exhibit(s) are incorporated into the Contract. County Data includes Confidential Information as defined in this Contract.
- 1.12. **"County Network"** means County owned, leased, or licensed equipment, hardware, and software that is interconnected via fiber optic, wireless, or other communication mediums for the purposes of County hosting, processing, using, sharing, and/or transporting data, video, voice, or any other form of information.
- 1.13. **"Day"** means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
- 1.14. **"Deliverables"** means goods and/or services provided under this Contract, whether tangible or intangible, and may be more specifically described in the Exhibits.
- 1.15. **"Effective Date"** means midnight on the date listed on the first page of this Contract.
- 1.16. **"Expiration Date"** means 11:59.59 p.m. on the date listed on the first page of this Contract.
- 1.17. **"E-Verify"** means an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Information and the registration process are found at the E-Verify website: <https://e-verify.uscis.gov/enroll>.
- 1.18. **"G2G Marketplace Website"** means an Internet site used by County to provide information to PPBs about businesses providing services to County and agreements used by County and available to PPBs to procure services.

- 1.19. **"Intellectual Property"** means any developments, improvements, designs, innovations, and materials that may be the subject of a trademark/service mark, copyright, patent, trade secret, which includes ideas, concepts, inventions, and processes related to the development and operation of computer software and systems.
- 1.20. **"Iran-Linked Business"** is defined in the Michigan Compiled Laws (MCL), specifically MCL 129.312, being Section 2 of Public Act 517 of 2012.
- 1.21. **"Not to Exceed Amount"** means the dollar amount listed on the first page of this Contract, unless amended. The "Not to Exceed Amount" is not the County's financial obligation under this Contract, but the maximum amount that can be paid to Contractor during the term of this Contract.
- 1.22. **"PPB"** which stands for Participating Public Body, means an entity created by state or Federal law which is primarily funded by or through a governmental authority and which registers to access County's G2G Marketplace Website.
- 1.23. **"Proposal"** means Contractor's response or bid to the County's Request for Proposal, Request for Qualifications, or Request for Quotes.
- 1.24. **"Purchase Order"** means the County's written request to Contractor for Deliverables pursuant to this Contract. The Purchase Order may include terms regarding delivery schedule, payment, and transportation.
- 1.25. **"Purchasing"** means the Purchasing Division of Oakland County.

## **§2. CONTRACT TERM AND RENEWAL**

- 2.1. **Contract Term.** This Contract shall begin on the Effective Date and shall end on the Expiration Date. Once the Contract has expired Contractor will no longer be listed in the G2G Marketplace, unless a new Contract is entered into by the Parties.
- 2.2. **Contract Renewal.** Unless otherwise provided herein, the Parties are under no obligation to renew or extend this Contract after the Expiration Date. This Contract may only be extended by an Amendment.
- 2.3. **Legal Effect.** This Contract shall be effective and binding when all of the following occur: (a) this Contract is signed by a Contractor Employee, legally authorized to bind Contractor; (b) this Contract is signed by an authorized County Agent; (c) all Contractor certificates of insurance, required by this Contract, are submitted and accepted by Purchasing; and (d) any other conditions precedent to this Contract have been met.

**§3. CONTRACT ADMINISTRATION AND AMENDMENTS**

- 3.1. **Contract and Purchase Order Issuance.** Purchasing shall issue this Contract and any Purchase Orders that may be required. Purchasing is the sole point of contact in the County regarding all procurement and contractual matters relating to this Contract and any Purchase Orders. Purchasing is the only County office/department authorized to make any Amendments to this Contract or Purchase Orders.
- 3.2. **Purchase Orders.** Purchase Orders issued under this Contract are governed by the terms and conditions of this Contract and are included and incorporated herein.
- 3.3. **Project Managers.** Each Party may designate an employee or agent to act as a Project Manager. If Project Managers are selected, they shall be listed, along with their duties, in Exhibit IX. Unless otherwise stated in Exhibit IX, the County's Project Manager has no authority to amend this Contract.
- 3.4. **Contract Administrators.** The County shall designate an employee or agent to act as Contract Administrator(s). Contractor may designate its employee or agent to act as Contract Administrator(s). The Contract Administrators shall be listed on the first page of this Contract. The County's Contract Administrator(s) shall be responsible for monitoring and coordinating day-to-day activities under this Contract, reviewing Deliverables and invoices, and submitting requests for Amendments to Purchasing. The County's Contract Administrator(s) have no authority to amend this Contract.
- 3.5. **Contract Amendments.** All Amendments to this Contract must be in writing. This Contract shall not be amended by any packing slip, Purchase Order, invoice, click through license agreement, or Contractor policies or agreements published on Contractor's website or otherwise. Amendments to this Contract shall be issued only by Purchasing. The Amendment shall be effective when signed by an authorized Contractor Employee and an authorized County Agent.
- 3.6. **Unauthorized Changes.** Contract changes shall not be effective until an Amendment containing the change is executed according to the procedures described in this Contract. If the Contractor is directed to perform work that Contractor believes is a change in the Contract/Deliverables, then Contractor must notify Purchasing that it believes the requested work is a change to the Contract before performing the requested work. If Contractor fails to notify Purchasing before beginning the requested work, then Contractor waives any claims for additional compensation for performing the requested work. If Contractor begins work that is outside the scope of this Contract or begins work before an Amendment is executed and then

stops performing that work, Contractor must, at the request of the County, undo any out-of-scope work that the County believes would adversely affect the County.

- 3.7. **Precedence of Contract Documents.** In the event of a conflict, the terms and conditions contained in Sections 1 through 14 of this Contract shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein. Terms and conditions contained in Contractor invoices, packing slips, receipts, acknowledgments, click-through licenses, and similar documents shall not change the terms and conditions of this Contract.

**§4. CONTRACT TERMINATION**

- 4.1. **County Termination.** In addition to any other legal rights the County may have to terminate or cancel this Contract, the County may terminate the Contract as follows:
- 4.1.1. **Immediate Termination.** The County may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor, if any of the following occur: (a) Contractor, officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a felony criminal offense or a criminal offense involving or related to Contractor's business; or (b) if any third-party funding for this Contract is reduced or terminated.
- 4.1.2. **Termination for Convenience.** The County may terminate or cancel this Contract, in whole or part, at any time, upon ninety (90) Days' notice to Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice.
- 4.2. **Contractor Termination.** Contractor may terminate or cancel this Contract, in whole or part, upon one hundred and eighty (180) Days' notice to the County, if the County materially breaches any duty or obligation contained herein and within such notice period has failed or has not reasonably attempted to cure the breach. The effective date of termination or cancellation and the specific alleged default shall be clearly stated in the notice to the County.
- 4.3. **County's Obligations Upon Termination.** The County's sole obligation in the event of termination or cancellation of this Contract is for payment of the actual Deliverables provided to the County before the effective date of termination. Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages, any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination or cancellation of this Contract. The County shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein. If the County chooses to terminate the Contract in part, then

the charges payable under this Contract must be equitably adjusted to reflect those Deliverables that are terminated.

- 4.4. **Contractor's Obligations Upon Termination.** If the County terminates this Contract, for any reason, then Contractor must do the following: (a) cease providing all Deliverables as specified at the time stated in the notice of termination; (b) take any action necessary, or as the County may direct, to preserve and protect Deliverables or other property derived or resulting from the Contract that is in Contractor's possession; (c) return all materials and property provided to Contractor by the County; (d) unless otherwise directed by the County, transfer title in and deliver to the County all Deliverables in the possession of Contractor or Contractor Employees (which Deliverables are transferred to the County "As-Is", except to the extent the amounts paid by the County for these Deliverables include warranties or warranty services and, in that situation, the Deliverables will be transferred with the warranty or warranty services and not "As-Is"); and (e) take any action to mitigate and limit any potential damages, including terminate or limit, as applicable, those subcontracts and outstanding orders for materials and supplies connected with or related to this Contract.
- 4.5. **Assumption of Subcontracts.** If Contractor is in breach of this Contract and the County terminates this Contract, then the County may assume, at its option, any subcontracts and agreements for Deliverables provided under the Contract and may pursue completion of the Deliverables by replacement Contract or otherwise as the County, in its sole judgment, deems expedient.

**§5. SCOPE OF DELIVERABLES AND FINANCIAL/PAYMENT OBLIGATIONS**

- 5.1. **Performance of Deliverables.** Contractor shall provide all Deliverables identified in and as set forth in Exhibit IX, any Purchase Orders, or any Amendments to this Contract.
- 5.2. **Software License(s).** If Contractor requires County to comply with a software license or any other third-party terms, the software license or other third-party terms must be attached to this Contract in Exhibit VI, and the Parties shall follow the terms and conditions therein. County is not obligated to follow or comply with any software license or other third-party terms that are not attached to or included in this Contract. Unless specifically agreed to by County in writing, if County Agents are required to accept click through license terms or any other terms not included in this Contract to access or use any of the Deliverables in this Contract, the terms and conditions of those click through licenses and other terms are without force and effect.
- 5.3. **Financial Obligations.** Except as otherwise set forth in this Contract, the County's sole financial obligation under this Contract shall be set forth in the Exhibit IX. The amount and



manner of payment of the financial obligation shall be set forth in Exhibit IX and may be in the Software License Exhibit VI, if applicable, or a Purchase Order.

- 5.4. **Payment Obligations.** Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the County's Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice, within sixty (60) days of Contractor's performance of the Deliverables listed in the invoice. Invoices shall contain the following information: (a) County Contract Number; (b) dates of Deliverables; (c) itemized list of Deliverables; (d) Contractor Tax ID Number (federal and State); (e) licenses; and (f) any other information reasonably requested by Purchasing. Unless otherwise set forth in the Exhibits, the County will pay undisputed invoices, which comply with this section (5.4), within sixty (60) days after receiving the invoice. Unless otherwise set forth in the Exhibits, the County shall only pay Contractor for Deliverables under this Contract and not any subcontractors or assignees of Contractor.
- 5.5. **Not to Exceed Amount.** The amount due and owing to Contractor, under this Contract, shall not exceed the "Not to Exceed Amount." If Contractor can reasonably foresee that the total financial obligation for the Contract will exceed the "Not to Exceed Amount," then Contractor shall provide Purchasing with notice of this fact as soon as possible, but no later than ten (10) days before this event.
- 5.6. **County Not Obligated for Penalties/Costs/Fines.** The County shall not be responsible or liable for any cost; fee; fine; penalty; or other assessment of any kind that is incurred or suffered by Contractor in connection with or resulting from Contractor's performance of this Contract under any circumstances.
- 5.7. **Set-Off of County Costs.** If the County incurs any costs (not specified in this Contract), loss or damage that is caused by or results from Contractor or Contractor Employees, then the County has the right to set-off those costs, loss, and/or damage from any amounts due and owing Contractor. This set-off includes, but is not limited to, withholding payment in an amount equal to the cost of any County-provided equipment, supplies, or badges, or other property that are not returned by Contractor upon completion, termination, or cancellation of this Contract. County also reserves the right at any time to set-off any amounts it owes to Contractor under this Agreement against any amounts that Contractor owes to County.
- 5.8. **In-Kind Services.** Unless expressly provided herein, this Contract does not authorize any in-kind services by either Party.

**§6. COUNTY'S G2G MARKETPLACE ADMINISTRATION.**

- 6.1. **Deliverables and Terms Extended to PPBs.** After a competitive bidding and selection process by County, Contractor was chosen to provide the Deliverables, described more fully in the

Exhibit IX, to County. Contractor shall offer the pricing, terms, and conditions in this Contract to a PPB, to enable a PPB to make purchases from Contractor according to the terms herein. Notwithstanding the foregoing, Contractor and a PPB may negotiate customized terms at their own discretion.

- 6.2. **NO COUNTY LIABILITY.** COUNTY SHALL NOT BE A PARTY TO A CONTRACT OR PURCHASE ORDER OF ANY TYPE BETWEEN CONTRACTOR AND A PPB. COUNTY SHALL NOT HAVE ANY LIABILITY, OF ANY SORT, TO CONTRACTOR, A PPB, OR ANY OTHER THIRD PARTY, FOR ANY HARM, DAMAGE, LOSS, OR ACTION THAT MAY ARISE FROM PURCHASES MADE BY ANY PPB PURSUANT TO THE TERMS OF THIS CONTRACT.
- 6.3. **Contractor and PPB Direct Dealing.** PPBs must deal directly with Contractor for any transactions such as purchases, invoices, price questions, disputes, etc. that relate to their individual agreement with Contractor. Contractor must respond timely to PPB inquiries. Failure to do so may result in County removing the Contract and Contractor's Information from the G2G Marketplace Website.
- 6.4. **G2G Marketplace Website.** County will provide the following information on its G2G Marketplace website:
- 6.4.1. State that the Contract was the result of a competitive bidding process.
- 6.4.2. Provide Contractor's contact information for inquiries.
- 6.4.3. Acknowledge that the County will receive a benefit from purchases subject to this Contract.
- 6.4.4. Provide a County Liaison to answer questions concerning the expiration date of the Contract, the procedure for purchasing off the Contract, and the competitive bidding process followed by County.
- 6.5. **Contractor Information.** Contractor shall provide the following information to County and shall update the information timely whenever changes occur:
- 6.5.1. Description of Contractor's **Deliverables** relating to those requested in the Request for Proposal will be placed on the G2G Marketplace Website.
- 6.5.2. Every six months Contractor shall provide County with a "Contract Usage Statement" which means the names, Scope of Services selected, quantities purchased, and dollar amount of each agreement signed by a PPB using this Contract. Contractor may provide the dollar amount of an agreement only if a PPB will not permit disclosure of the other items. Failure to provide the Contract Usage Statement information to County may result in Contractor being removed from the G2G Marketplace website.

- 6.5.3. The names of two representatives to act as a primary and secondary point of contact to provide County with the Contract Usage Statements and other information required in this Contract.
- 6.6. **Administrative Fee.** In recognition of the benefits to Contractor for County providing information to PPBs and potential participants, and the costs savings to Contractor for having this information available, Contractor shall pay County an administrative fee or other benefit described below in this section (the "Administrative Fee") if Contractor offers the pricing, terms, and/or conditions in this Contract to a PPB. The Administrative Fee will correspond to three percent (3%) of the revenue Contractor receives from orders, purchases, and/or contracts it has entered into with PPBs who are receiving goods or services from Contractor based on the pricing, terms, and/or conditions of this Contract. Contractor shall pay the Administrative Fee to the County on a quarterly basis after the Contractor is paid by the PPB. County may provide Contractor with additional instructions regarding the procedure and/or manner of paying the Administrative Fee to County. In addition to and without limiting any other remedies allowed by law or equity, Contractor's failure to timely pay the Administrative Fee may, in County's sole discretion, result in removal of Contractor from the G2G Marketplace website.

**§7. CONTRACTOR'S WARRANTIES AND ASSURANCES**

- 7.1. **Full Knowledge of Contract Expectations.** Contractor warrants that before submitting its Proposal and/or entering into this Contract, it had a full opportunity to review all County requirements and/or expectations for this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform the Contract as specified herein.
- 7.2. **Complete and Accurate Representations.** Contractor certifies that all statements, assurances, records, and materials submitted to the County in connection with seeking and obtaining this Contract have been truthful, complete, and accurate.
- 7.3. **Access to Contractor Policies.** If the Parties agree in this Contract to follow any Contractor policies, such as acceptable use or privacy policies, then Contractor shall retain each version of such policy with the effective dates and shall promptly provide such to the County, if requested.
- 7.4. **Grant Compliance.** If any part of this Contract is supported or paid for with any State, federal, or other third-party funds granted to the County, then Contractor shall comply with all applicable grant requirements. Upon request of Contractor, the County shall provide Contractor with a copy of the applicable grant requirements.
- 7.5. **Contractor Incidental Expenses.** Except as otherwise expressly provided in this Contract, Contractor shall be solely responsible and liable for all costs and expenses associated or

needed to perform this Contract, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.

- 7.6. **Equipment and Supplies.** Contractor is responsible for providing all equipment and supplies to perform this Contract, which are not expressly required to be provided by the County.
- 7.7. **Contractor Employees.**
- 7.7.1. **Number and Qualifications of Contractor Employees.** Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to perform this Contract. Contractor shall ensure all Contractor Employees have the knowledge, skill, and qualifications to perform this Contract and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.
- 7.7.2. **Control and Supervision of Contractor Employees.** Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employees.
- 7.7.3. **Removal or Reassignment of Personnel at the County's Request.** Contractor shall remove a Contractor Employee performing work under this Contract at the County's request provided that the County's request is based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the removal of a Contractor Employee results in an unanticipated delay, which is attributable to the County, then this delay shall not be considered a breach of the Contract and the terms and conditions of this Contract effected by the removal will be adjusted accordingly.
- 7.7.4. **Contractor Employee Identification.** If requested by the County, Contractor Employees shall wear and display a County-provided identification badge at all times while working on County premises. In order to receive a County identification badge, a Contractor Employee shall sign the "Acknowledgement of Independent Contractor Status" form, Exhibit VIII to this Contract. Contractor shall return all County-provided identification(s) upon completion of Contractor's obligations under this Contract.
- 7.7.5. **Background Checks.** At the County's request, Contractor Employees performing work under this Contract shall be subject to a background check by the County. The scope of the background check is at the discretion of the County and the results will be used to determine Contractor Employee's eligibility to perform work under this Contract. Any request for background checks will be initiated by the County and will be reasonably related to the type of work requested. Contractor and Contractor Employees shall provide all information or documents necessary to perform the background check.

- 7.7.6. **Contractor Employee Expenses.** All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance). Contractor warrants that all Contractor Employees shall fully comply with and adhere to the terms of this Contract. Contractor shall be solely liable for all applicable Contractor Employees' federal, state, or local payment withholdings or contributions and/or all Contractor Employee related pension or welfare benefits plan contributions under federal or state law. Contractor shall indemnify, defend, and hold the County harmless for all Claims against the County by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee including, but not limited to, Worker's Compensation, disability pay, or other insurance of any kind.
- 7.7.7. **Contractor's Compliance with the Patient Protection and Affordable Care Act.** If Contractor is subject to the Patient Protection and Affordable Care Act ("ACA"), PL 111-148, 124 Stat 119, then Contractor shall ensure that all Contractor Employees, under assignment to the County, and their dependents, as defined by the ACA, are provided with or have access to insurance as required by the ACA. If Contractor is subject to the ACA, Contractor warrants it offers group health coverage to Contractor Employees and their dependents that is affordable, that provides minimum essential coverage and value, and that each offer of coverage meets the timing requirements of the ACA. Contractor warrants, whether or not it is subject to the ACA, that it will pay all applicable fees, taxes, or fines, as set forth in the employer mandates of the ACA under Tax Code §4980H and related regulations for any Contractor Employee, whether the fee, tax, or fine is assessed against the Contractor or the County.
- 7.8. **Acknowledgment of Independent Contractor Status.**
- 7.8.1. **Independent Contractor.** Nothing in this Contract is intended to establish an employer-employee relationship between the County and Contractor or any Contractor Employee. In no event, shall Contractor Employees be deemed employees, agents, volunteers, or subcontractors of the County. Contractor shall ensure that Contractor Employees are apprised of their status and the limitations independent contractors have of this status.
- 7.8.2. **Contractor/Contractor Employee Representations.** Contractor and/or Contractor Employees shall not represent themselves as County employees. Contractor shall ensure that Contractor Employees do not represent themselves as County employees.
- 7.8.3. **County Benefits and Plans.** Contractor and Contractor Employees shall not be entitled to participate in any County employee benefit plans and programs, including but not limited to, retirement, deferred compensation, insurance (including without limitation, health, disability, dental, and life), and vacation pay. This limitation includes access to benefit plans and programs that are not described by a written plan. However, Contractor Employees who are

retired County Employees may receive vested post-employment benefits such as retiree health care and pension benefits from Oakland County.

- 7.8.4. **County Reliance.** The County entered into this Contract in reliance of the representations made by Contractor regarding its understanding of the role of independent contractors, its stated relationship to Contractor Employees, and other representations Contractor has made regarding the management and performance oversight of Contractor Employees.
- 7.8.5. **Independent Employment Status.** If Contractor provides Contractor Employees for staffing and/or leasing services to County, those Contractor Employees shall sign Exhibit VIII, Acknowledgement of Independent Employment Status, prior to performing services for the County.
- 7.9. **Permits and Licenses.** Contractor shall be responsible for obtaining and maintaining, throughout the term of this Contract, all licenses, permits, certificates, governmental authorizations, and business/professional licenses necessary to perform this Contract. Upon request by the County, Contractor shall furnish copies of any permit, license, certificate, or governmental authorization necessary to perform this Contract.
- 7.10. **E-Verify.** In accordance with Miscellaneous Resolution No. 09116 (BOC Minutes, July 30, 2009, pp 37-38), unless otherwise exempted, all service contractors who wish to contract with the County to provide services must first certify they have registered with, will participate in, and continue to utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor. Breach of this term or condition is considered a material breach of this Contract. Contractor's execution of this Contract constitutes a certification that they are authorized to certify on behalf of Contractor and do hereby certify on behalf of Contractor that the Contractor has registered with, has and will participate in, and does and will continue to utilize once registered and throughout the term of this Contract and any permissible extension hereof, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor.
- 7.11. **Iran-Linked Business Certification.** Contractor certifies that it is not an Iran-Linked Business. Contractor further certifies that it was not an Iran-Linked Business at the time it submitted its Proposal for this Contract. Contractor must promptly notify the County, if Contractor becomes an Iran-Linked Business at any time during this Contract.



- 7.12. **Foreign Adversary Certification.** If Contractor supplies technology or equipment to County, Contractor certifies that the technology and/or equipment was not produced, assembled or manufactured by a foreign adversary, as defined, and as prohibited by the federal government.
- 7.13. **Taxes.**
- 7.13.1. **Contractor Taxes.** Contractor shall collect and pay its local, state, and federal taxes, including but not limited to, all employment taxes, sales taxes, personal property taxes, and real property taxes. The County shall not be liable to or required to reimburse Contractor for any local, state, or federal tax of any kind.
- 7.13.2. **County Tax-Exempt.** The County is exempt from state and local sales tax, personal property tax, and real property tax. Prices under this Contract shall not include taxes, unless the County is not tax-exempt for a specific Deliverable. Exemption certificates for sales tax will be furnished upon request.
- 7.14. **Warranty for Services.** Contractor warrants that all Deliverables that are services shall be performed in compliance with all applicable laws, statutes, regulations, ordinances, requirements and specifications in the Exhibits, industry best practices and care, professional standards, and in a diligent, workmanlike, and expeditious manner. Contractor acknowledges and agrees that time is of the essence for all Deliverables that are services.
- 7.15. **Warranty for Goods.** All Deliverables that are goods shall be subject to the following warranties:
- 7.15.1. **Warranty of Merchantability.** Goods provided by Contractor pursuant to this Contract shall: (a) be merchantable; (b) be of good quality; (c) be fit for their ordinary purpose; (d) be adequately contained and packaged; and (e) conform to the specifications and descriptions contained in this Contract. Contractor acknowledges and agrees that time is of the essence for providing all Deliverables that are goods.
- 7.15.2. **Warranty of Fitness for a Particular Purpose.** If Contractor knows or has reason to know that the goods will be used for a particular purpose and the County is relying on Contractor's skill or judgment to select or furnish the goods, then there is a warranty that the goods are fit for a particular purpose.
- 7.15.3. **Warranty of Title.** All goods conveyed to the County shall be conveyed and transferred: (a) with good title; (b) free from any security interest, lien, or encumbrance that the County did not have knowledge of when the Contract was executed; and (c) free of any rightful claim of infringement or similar claim by a third-party.
- 7.16. **ADA and Section 508 Compliance.** If Contractor is providing a Deliverable that requires County Agents or the public to use a software application or to access a website, Contractor

warrants that end users can utilize the software or access the website in accordance with the accessibility requirements of the ADA and the Rehabilitation Act of 1973. Contractor's Deliverable will conform, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may provide a description of conformance with the above-mentioned specifications by means of a completed Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or another comparable document. Any additional compliance requirements shall be specified in the Scope of Contractor's Deliverables Exhibit IX.

**§8. LIABILITY**

8.1. **CONTRACTOR INDEMNIFICATION.** CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE COUNTY HARMLESS FROM ALL CLAIMS, INCURRED BY OR ASSERTED AGAINST THE COUNTY BY ANY PERSON OR ENTITY, WHICH ARE ALLEGED TO HAVE BEEN CAUSED DIRECTLY OR INDIRECTLY FROM THE ACTS OR OMISSIONS OF CONTRACTOR OR CONTRACTOR'S EMPLOYEES. THE COUNTY'S RIGHT TO INDEMNIFICATION IS IN EXCESS AND ABOVE ANY INSURANCE RIGHTS/POLICIES REQUIRED BY THIS CONTRACT.

8.2. **NO INDEMNIFICATION FROM THE COUNTY.** CONTRACTOR SHALL HAVE NO RIGHTS AGAINST THE COUNTY FOR INDEMNIFICATION, CONTRIBUTION, SUBROGATION, OR ANY OTHER RIGHT TO BE REIMBURSED BY THE COUNTY, EXCEPT AS EXPRESSLY PROVIDED HEREIN.

8.3. **COUNTY LIMITATION OF LIABILITY.**

8.3.1. COUNTY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, REMOTE, SPECULATIVE, PUNITIVE, EXEMPLARY, LIQUIDATED, TREBLE, OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, OPPORTUNITY, USE, REVENUE, DATA, OR GOODWILL, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, TORT, EQUITY, STRICT LIABILITY, UNDER STATUTE, OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR CONTEMPLATED AND EVEN IF COUNTY WAS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

8.3.2. COUNTY SHALL NOT BE LIABLE IN CONTRACT, TORT, EQUITY, STRICT LIABILITY, UNDER STATUTE, OR ANY OTHER THEORY OF LIABILITY, FOR TOTAL AGGREGATE DAMAGES IN EXCESS OF COUNTY'S PAYMENT OBLIGATIONS TO CONTRACTOR FOR THE DELIVERABLES UNDER THIS CONTRACT.

**§9. INSURANCE AND BOND REQUIREMENTS**

9.1. **Contractor Provided Insurance.** At all times during this Contract, Contractor shall obtain and maintain insurance according to the requirements listed in Exhibit I.



- 9.2. **Contractor Provided Bonds.** Pursuant to Public Act 213 of 1963, if the Contract Not to Exceed Amount exceeds fifty thousand dollars (\$50,000.00) and the Contract is for the construction, alteration, or repair of any public building or public work or improvement of the County, then the Contractor shall furnish, at its sole cost, a performance bond and a payment bond to the County, which shall become binding upon execution of the Contract. Each bond shall be in an amount fixed by the County, as set forth in Exhibit IX, but in no event shall each bond be less than 25% of the Contract Not to Exceed Amount.

**§10. INTELLECTUAL PROPERTY**

- 10.1. **Contractor Use of County Licensed Software.** In order for Contractor to perform this Contract, the County may permit Contractor or Contractor Employees to access certain Software licensed to the County. Contractor or Contractor Employees shall not transfer, remove, use, copy, or otherwise provide or make available such Software or documentation to any other person or entity, for any purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither Contractor nor Contractor Employee shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any Software. Neither Contractor nor Contractor Employee shall use any Software contrary to the provisions of any applicable Software license agreement or state or federal law.
- 10.2. **Contractor License to Use County Servicemarks.** If this Contract involves the use of County servicemarks, then Contractor is granted a license to use the servicemarks subject to the terms listed in Exhibit VII. Contractor shall only use the servicemarks as directed by the County in Exhibit VII. If Exhibit VII is not selected and attached to this Contract, Contractor shall not and has no right to use County servicemarks.
- 10.3. **Assignment of Rights.** In consideration for the performance of this Contract and the fees paid to Contractor, Contractor agrees to the following: (a) Contractor shall have no copyright, patent, trademark, or trade secret rights in County Intellectual Property; (b) any and all programs, inventions, and other work or authorship developed by Contractor while providing Deliverables to the County are works made for hire, created for, and owned exclusively by the County, unless otherwise specified in the Contract; (c) Contractor assigns to the County all rights and interest in County Intellectual Property, which Contractor has made or conceived or may make and conceive, either solely or jointly with others, either on or off County premises while performing this Contract or with the use of the time, material, or facilities of the County; and (d) Contractor and its applicable Contractor Employees shall sign any documents necessary for the County to register patents, copyrights, or trademarks with federal or state agencies. Contractor shall ensure Contractor Employees assign their rights and interests in County Intellectual Property to the County.

- 10.4. **Infringement Remedies.** If, in either Party's opinion, any of the services or Deliverables supplied by Contractor or Contractor Employees are likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor shall at its own expense: (a) procure for County the right to continue using the services or Deliverables, or if this option is not reasonably available to Contractor; (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by County with appropriate credits to County and reimburse County for any losses or costs incurred as a consequence of County ceasing its use and returning it.

**§11. CONFIDENTIAL INFORMATION**

- 11.1. **Contractor Use of Confidential Information.** Contractor and Contractor Employees shall use appropriate safeguards to protect the confidentiality and integrity of Confidential Information. Contractor shall not reproduce, provide, disclose, or give access of Confidential Information to any Contractor Employee or third-party not having a legitimate need to know. Contractor and Contractor Employees shall only use the Confidential Information for performance of this Contract. Notwithstanding the foregoing, Contractor may disclose the Confidential Information, if required by law, statute, or other legal process; provided that Contractor: (a) gives the County prompt written notice of the impending disclosure; (b) provides reasonable assistance to the County in opposing or limiting the disclosure; and (c) makes only such disclosure as is compelled or required. This Contract imposes no obligation upon Contractor with respect to any Confidential Information which Contractor can establish by legally sufficient evidence: (a) was in possession of or was known by Contractor, prior to its receipt from the County, without any obligation to maintain its confidentiality; or (b) is obtained by Contractor from a third party having the right to disclose it, without an obligation to keep such information confidential.
- 11.2. **County Confidentiality Obligations.** County has no obligation to Contractor to keep confidential any information or records that are required to be disclosed by County under the Michigan Freedom of Information Act, 1976 PA 442, as amended (the "FOIA") nor shall County be obligated to inform or provide notice to Contractor regarding the disclosure of information or records that are required to be disclosed under the FOIA. Furthermore, County may disclose Confidential Information to third parties if required by law, statute, subpoena, court order, or other legal process.
- §12. COUNTY DATA.** If Contractor uses or possesses County Data in the performance of this Contract, then the following provisions contained in this section apply:

- 12.1. **Use of County Data.** Contractor and Contractor Employees shall have a limited license to County Data, including a license to collect, process, store, generate and display County Data but only to the extent necessary to provide services under this Contract. Contractor and Contractor Employees may not use, sell, rent, transfer, distribute, or otherwise disclose or make available County Data to any third-party, for Contractor's own purposes, or for the benefit of anyone other than the County, without the County's prior written consent, unless otherwise provided for within an Exhibit to this Contract.
- 12.2. **Unauthorized Access/Disclosure or Theft of County Data.** Contractor or Contractor Employees shall notify the County's Chief Information Office as soon as practicable but no later than forty-eight (48) hours of "Discovery" of suspected unauthorized access, acquisition, disclosure, or theft of County Data (a "Security Breach"). "Discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employees. Upon Discovery of a Security Breach, Contractor shall do the following: (a) take reasonable measures to promptly cure the deficiencies relating to the Security Breach in order to secure County Data; (b) cooperate with the County in investigating the occurrence, including making available all relevant records, logs, files, and data reporting materials required upon request by the County; and (c) comply with all applicable federal or state laws and regulations pertaining to unauthorized disclosures or as otherwise directed by the County. If Contractor uses or possesses County Data described in Exhibit II (HIPAA), Exhibit III (PII), or Exhibit IV (CJIS), Contractor shall follow the procedures in the applicable Exhibits governing the unauthorized access/disclosure or theft of County Data.
- 12.3. **Storage of County Data.** Contractor shall only store and process County Data at and from data centers located within the United States. Contractor shall not permit Contractor Employees to store County Data on portable devices, including, but not limited to, personal computers, tablets, laptops, and phones, except for portable devices that encrypt County Data at rest, have up-to-date firewall and antivirus protection, require multi-factor authentication to access, and are used and kept within the U.S. Contractor shall permit its Contractor Employees to access County Data remotely only as required to provide the Deliverables.
- 12.4. **Requirements for PCI Data.** If Contractor possesses, stores, processes, or transmits County Data that is considered Payment Card Industry (PCI) Data by the PCI Security Standards Council, Contractor shall comply with PCI Data Security Standard (DSS) and shall provide the County with a copy of its PCI DSS Attestation of Compliance and its Certificate of Compliance with PCI Data Security Standard on or before the Effective Date. Contractor warrants that it will keep its Certification of Compliance with PCI Data Security Standard current and will provide evidence that the Certification of Compliance is current to County upon request.

- 12.5. **Response to Legal Request for County Data.** If the County receives a Court Order, a Freedom of Information Act (FOIA) request, or other legal request to provide County Data held by Contractor, then Contractor shall provide County Data to the County, in a format directed by the County, within the time frame required by law.
- 12.6. **Obligations upon Expiration, Termination or Cancellation of Contract.** At the County's sole discretion, upon expiration, termination, or cancellation of this Contract, Contractor shall return County Data in a mutually agreeable format in a prompt and orderly manner or provide for the secure disposal of County Data as directed by County.
- §13. **INFORMATION TECHNOLOGY STANDARDS.** If Contractor provides a technology application or requires the use of the Internet to access a Deliverable, the following sections apply:
- 13.1. **County Standards.** If Contractor and Contractor Employees that will be given access to the County Network, Contractor and Contractor Employees shall comply with the County Electronic Communications and Use of Technology Policy.
- 13.2. **Implementation of Security Measures.** Contractor shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access to the County Network and County Data. Such measures shall be in accordance with security industry best practice and not less stringent than the measures Contractor applies to protect its own data of a similar kind.
- 13.3. **Completion of County Security Questionnaire.** Contractor warrants it has completed the County's security questionnaire. Each year, prior to the anniversary date of this Contract, and upon receipt of the County's security questionnaire, Contractor shall promptly provide the County with the answers to the County's security questionnaire.
- §14. **GENERAL TERMS AND CONDITIONS**
- 14.1. **Access to County Property or Facilities.** As set forth in this Contract, Contractor has access to and the right to use County property and facilities necessary to perform this Contract. Unless otherwise provided in this Contract or Contractor receives prior written permission from the County's Director responsible for the department requiring access outside of Business Days, Contractor may only access and use County property and facilities for performance of this Contract on Business Days.
- 14.2. **Signs on County Property or Facilities.** Contractor shall not place any signs or advertisements on County property or facilities without the prior written permission of the County's Director of Facilities Management or successor, or designee.

- 14.3. **Use of County Property or Facilities.** While performing this Contract, Contractor shall keep County property or facilities and anything stored thereon in a clean, safe, sanitary, responsible, and healthful condition and shall keep the property and facilities in a manner that will not prevent or interfere with the County's performance of its functions.
- 14.4. **Removal of Contractor Personal Property.** At the expiration or termination of this Contract, Contractor shall leave County property or facilities in the same condition that Contractor found them and clean of all rubbish. Contractor shall remove all of its personal property within thirty (30) Days of expiration or termination of this Contract. If Contractor does not remove its personal property within the thirty (30) Day period, then the County may, at County's sole discretion, dispose of the personal property and bill Contractor for any costs associated with the removal and disposal or keep, have all rights to, and be the owner of the personal property.
- 14.5. **Damage to County Property or Facilities.** Contractor shall be responsible for any damage to any County property or a facility that is caused by Contractor or Contractor Employees. If damage occurs, the County shall make the necessary repairs and/or replacements or cause a third party to make the necessary repairs or replacements, provided, however, that Contractor shall reimburse the County for all costs associated with repairing and/or replacing the damaged property or facilities. Without limiting any of the County's other setoff rights in this Contract, County has the right to set-off those costs and/or damages from any amounts due and owing Contractor.
- 14.6. **Damage to Contractor's Property.** Contractor shall be solely liable and responsible for any property loss or damage resulting from fire, theft, or other means to Contractor's personal property located, kept, or stored on or at County property or facilities during performance of this Contract.
- 14.7. **County's Right to Suspend Contract Performance.** Upon written notice, the County may require Contractor to suspend performance of this Contract if Contractor has failed to comply with any federal, state, or local laws or any requirements contained in this Contract. The right to suspend performance of this Contract is in addition to the County's right to terminate and/or cancel this Contract. The County shall incur no penalty, expense, or liability to Contractor if the County suspends performance of this Contract under this Section.
- 14.8. **Discrimination.** Contractor, and its subcontractors under this Contract, shall not discriminate against an employee or an applicant for employment in hiring, any terms and conditions of employment or matters related to employment regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, genetic information, height, weight, disability, veteran status, familial status, marital status or any other reason, that is

unrelated to the person's ability to perform the duties of a particular job or position, in accordance with applicable federal and state laws.

- 14.9. **Conflict of Interest.** Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.301, *et seq.* and MCL 15.321, *et seq.*), no contracts shall be entered into between the County and any County Agent. To avoid any real or perceived conflict of interest, Contractor shall disclose to the County the identity of all Contractor Employees and all Family Members of Contractor Employees who: a) are employed by the County on the date the Contract is executed; and b) become employed by the County during the term of the Contract. Contractor shall also disclose to the County the identity of all County Agents and all Family Members of County Agents who: a) are employed by Contractor on the date the Contract is executed; and b) become employed by Contractor during the term of the Contract. For the purposes of this section, "Family Member" means a person's spouse or spouse's sibling or child; a person's sibling or sibling's spouse or child; a person's child or child's spouse; or a person's parent or parent's spouse, and includes these relationships as created by adoption, marriage, or law.
- 14.10. **Access and Records.** Contractor will maintain accurate books and records in connection with performance of this Contract for thirty-six (36) months after the end of this Contract and Contractor shall provide the County with reasonable access to such books and records, upon request.
- 14.11. **Audit.** The County or an independent auditor hired by the County may perform contract audits (in its sole discretion) and shall have the authority to access all pertinent records and data and to interview any Contractor Employee during the term of this Contract and for a period of three years after final payment. Contractor shall explain any audit findings, questioned costs, or other Contract compliance deficiencies to the County within thirty (30) Business Days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report and an action plan to resolve the audit findings. A copy of Contractor's response will be included in the final report. Failure by Contractor to respond in writing within thirty (30) Business Days shall be deemed acceptance of the draft audit report and will be noted in the final report.
- 14.12. **Assignments/Delegations/Subcontracts.**
- 14.12.1. **Prior Written Consent Required.** Except by operation of law, neither Party may assign, delegate, or subcontract any of its duties, obligations, or rights under this Contract without the prior written consent of the other Party; provided, however, Contractor may assign, delegate, or subcontract this Contract to an affiliate or subsidiary as long as the affiliate or subsidiary is adequately capitalized and can provide adequate written assurances to the County that the affiliate or subsidiary can perform this Contract. The County may withhold consent, if the County determines that the assignment, delegation, or subcontract would



impair performance of this Contract or the County's ability to recover damages under this Contract. Contractor shall also provide the County with adequate information to allow the County to make a determination regarding the assignment, delegation, or subcontract.

- 14.12.2. **Flow Down Clause Required.** Any assignment, delegation, or subcontract by Contractor must include a requirement that the assignee, delegee, or subcontractor will comply with the terms and conditions of this Contract. The assignment, delegation, or subcontract shall in no way diminish or impair performance of any term or condition of this Contract.
- 14.12.3. **Contractor Responsibility for Assigns/Delegates/Subcontractors.** If Contractor assigns, delegates, or subcontracts this Contract, in whole or in part, Contractor shall remain the sole point of contact regarding all matters under this Contract and shall remain liable for performance of this Contract. Contractor is solely responsible for the management of assignees, delegees, and subcontractors.
- 14.12.4. **Performance Required.** If an assignee, delegee, or subcontractor fails to perform as required under this Contract, Contractor shall contract with another entity for such performance. Any additional costs associated with securing another assignee, delegee, or subcontractor shall be the sole responsibility of Contractor.
- 14.13. **Non-Exclusive Contract.** This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the County may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee Contractor or any Contractor Employee any fixed or certain number of Deliverables.
- 14.14. **No Third-Party Beneficiaries.** Except as expressly provided for the benefit of the Parties and the PPBs, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' right in this Contract, or any other right in favor of any other person or entity.
- 14.14.1. **Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: **Section 1.** Contract Definitions, **Section 2.** Contract Term and Renewal, **Section 5.** Scope of Deliverables and Financial/Payment Obligations, Section 6. County's G2G Marketplace Administration, **Section 7.** Contractor's Warranties and Assurances, **Section 8.** Liability, **Section 9.** Insurance and Bond Requirements, **Section 10.** Intellectual Property, **Section 11.** Confidential

Information, **Section 13.** Information Technology Standards, and **Section 14.** General Terms and Conditions; and if incorporated into this Contract, Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements), Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information), and Exhibit IV: Requirements for Contractors with Access to CJIS Data (Criminal Justice Information Security).

- 14.15. **Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the County.
- 14.16. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, executive orders, insurance policy requirements, and requirements applicable to its activities under this Contract. Contractor shall comply with all applicable laws and regulations related to the import, export, re-export, transfer, shipping, sale, re-sale, and/or use of goods, services, information, data, and equipment involving or related to this Contract.
- 14.17. **Force Majeure.** Notwithstanding any other term or condition of this Contract, neither Party shall be liable for failure to perform contractual duties or obligations caused by events beyond their reasonable control, including but not limited to: (a) acts of public enemies; (b) natural disasters; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) strikes, lockouts, work stoppages, or other labor difficulties; or (h) compliance with law. Reasonable notice shall be given to the affected Party of such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its contractual duties or obligations if a reasonably anticipated, insurable business risk, such as business interruption or any insurable casualty or loss occurs.
- 14.18. **Notices.**
- 14.18.1. **Written Notice.** All notices required under this Contract shall be in writing. Notices shall be effective: (a) the next Business Day, if personally delivered; (b) the third Business Day, if sent by U.S. mail, postage prepaid, return receipt requested; (c) the next Business Day, if sent by a nationally recognized overnight express courier with a reliable tracking system; or (d) the next Business Day with a written response or receipt of confirmation, if sent by e-mail or fax.
- 14.18.2. **Notice to Contractor.** Unless otherwise specified, Notice to Contractor shall be addressed to the Contract Administrator listed on the first page of this Contract.



- 14.18.3. **Notice to County.** Unless otherwise specified herein, Notice to the County shall be addressed to Purchasing, the County Project Manager (if applicable), and the County Contract Administrator(s) listed on the first page of this Contract.
- 14.19. **Captions.** Section and subsection numbers, captions, and any index to sections or subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this Contract. In this Contract, for any noun or pronoun, use of the singular or plural form, use of the nominative, possessive, or objective case, and any reference to gender (masculine, feminine, and neuter) shall mean the appropriate form, case, or gender as the context requires.
- 14.20. **Waiver.** Waiver of any term or condition under this Contract must be in writing and notice given pursuant to this Contract. No written waiver, in one or more instances, shall be deemed or construed as a continuing waiver of any term or condition of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.
- 14.21. **Cumulative Remedies.** A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 14.22. **Severability.** If a court of competent jurisdiction finds a term or condition of this Contract to be illegal or invalid, then the term or condition shall be deemed severed from this Contract. All other terms or conditions shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the County harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County.
- 14.23. **Dispute Resolution.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Manager (if applicable) and Contract Administrators for possible resolution.
- 14.24. **Governing Laws/Consent to Jurisdiction and Venue.** This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan, excluding Michigan's conflict of law principles. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50<sup>th</sup> District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court

rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.

- 14.25. **Entire Contract.** This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

**EXHIBIT I**

**INSURANCE REQUIREMENTS**

During this Contract, the Contractor shall provide and maintain, at Contractor's expense, all insurance as set forth and marked below, protecting the County against any Claims, as defined in this Contract. The insurance shall be written for not less than any minimum coverage herein specified. Limits of insurance required in no way limit the liability of the Contractor.

**Primary Coverages**

**Commercial General Liability Occurrence Form** including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Broad Form Contractual including coverage for obligations assumed in this Contract;

\$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

**Workers' Compensation Insurance** with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 for each accident, \$500,000 for a disease for each employee, and \$500,000 for a disease policy limit. . Contractor must comply with the following:

1. ☒ Be a Fully Insured or State approved self-insurer;
2. ☐ Sole Proprietors must submit a signed Sole Proprietor form; or
3. ☐ Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

Evidence of workers' compensation insurance is not necessary if neither Contractor nor any Contractor Employees come onsite to any County real property, land, premises, buildings, or other facilities in the performance of this Contract

**Commercial Automobile Liability Insurance** covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no company owned, hired or non-owned automobiles utilized in the performance of this Contract.

**Commercial Umbrella/Excess Liability Insurance** with minimum limits of \$2,000,000 each occurrence. This coverage shall be in excess of the scheduled underlying General Liability, Automobile Liability, and Employer's Liability Insurance policies with exclusions that are not broader than those contained in the underlying policies. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.

**Supplemental Coverages. The following supplemental coverages are required if selected (checked):**

1. ☒ **Professional Liability/Errors & Omissions Insurance** (i.e., Consultants, Technology Vendors, Architects, Engineers, Real Estate Agents, Insurance Agents, Attorneys, etc.) with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when the Contractor provides professional services that the County relies upon.
2. ☒ **Cyber Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when the Contractor has access to County IT systems and/or stores County data electronically.
3. ☐ **Commercial Property Insurance.** The Contractor shall be responsible for obtaining and maintaining insurance covering their equipment and personal property against all physical damage.
4. ☐ **Liquor Legal Liability Insurance** with a limit of \$1,000,000 each occurrence shall be required when liquor is served and/or provided by Contractor.
5. ☐ **Pollution Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when storage, transportation and/or cleanup & debris removal of pollutants are part of the services utilized.
6. ☐ **Medical Malpractice Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when medically related services are provided.
7. ☐ **Garage Keepers Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate shall be required when County owned vehicles and/or equipment are stored and/or serviced at the Contractors facilities.
8. ☐ **Other Insurance Coverages** as may be dictated by the provided product/service and deemed appropriate by the County Risk Management Department.

**General Insurance Conditions**

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the County;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the County for subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the County;
3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Contractor;
4. Contractors shall be responsible for their own property insurance for all equipment and personal property used and/or stored on County property;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the "County of Oakland" and its officers, directors, employees, appointees and commissioners as additional insured where permitted by law and policy form;
6. If the Contractor's insurance policy has higher limits than the minimum coverage requirements stated in this document the higher limits shall apply and in no way shall limit the overall liability assumed by the Contractor under contract.
7. The Contractor shall require its contractors or sub-contractors, not protected under the Contractor's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;
8. Certificates of insurance must be provided no less than ten (10) Business Days prior to the County's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and provide thirty (30) days' written notice of cancellation/material change endorsement to the insurance coverages required by this Exhibit.
9. All insurance carriers must be licensed and approved to do business in the State of Michigan along with the Contractor's state of domicile and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the County Risk Management Department.

## EXHIBIT II

### BUSINESS ASSOCIATE AGREEMENT

(Health Insurance Portability and Accountability Act Requirements)

Exhibit II is a Business Associate Agreement between Contractor ("Business Associate") and the County ("Covered Entity"). This Exhibit is incorporated into the Contract and shall be hereinafter referred to as "Agreement." The purpose of this Agreement is to facilitate compliance with the Privacy and Security Rules and to facilitate compliance with HIPAA and the HITECH Amendment to HIPAA.

- §1. DEFINITIONS.** The following terms have the meanings set forth below for purposes of the Agreement, unless the context clearly indicates another meaning. Terms used but not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule.
- 1.1 **Business Associate.** "Business Associate" means the Contractor.
- 1.2 **CFR.** "CFR" means the Code of Federal Regulations.
- 1.3 **Contract.** "Contract" means the document with the Purchasing Contract Number.
- 1.4 **Contractor.** "Contractor" means the entity or individual defined in the Contract and listed on the first page of this Contract.
- 1.5 **Covered Entity.** "Covered Entity" means the County of Oakland as defined in the Contract.
- 1.6 **Designated Record Set.** "Designated Record Set" is defined in 45 CFR 164.501.
- 1.7 **Electronic Health Record.** "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- 1.8 **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
- 1.9 **HITECH Amendment.** "HITECH Amendment" means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.
- 1.10 **Individual.** "Individual" is defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in 45 CFR 164.502(g).
- 1.11 **Privacy Rule.** "Privacy Rule" means the privacy rule of HIPAA as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.12 **Protected Health Information.** "Protected Health Information" or "PHI" is defined in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.13 **Required By Law.** "Required By Law" is defined in 45 CFR 164.103.
- 1.14 **Secretary.** "Secretary" means the Secretary of the Department of Health and Human Services or his or her designee.

- 1.15 **Security Incident.** “Security Incident” is defined in 45 CFR 164.304.
- 1.16 **Security Rule.** “Security Rule” means the security standards and implementation specifications at 45 CFR part 160 and part 164, subpart C.
- §2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.** Business Associate agrees to perform the obligations and activities described in this Section.
- 2.1 Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate shall take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment, including, but not limited to, the following: (a) Business Associate shall appoint a HIPAA privacy officer and a HIPAA security officer; (b) Business Associate shall establish policies and procedures to ensure compliance with the Privacy and Security Rules; (c) Business Associate shall train its workforce regarding the Privacy and Security Rules; (d) Business Associate shall enter into a privacy/security agreement with Covered Entity; (e) Business Associate shall enter into privacy/security agreements with its subcontractors that perform functions relating to Covered Entity involving PHI; (f) Business Associate shall conduct a security risk analysis; and (g) Business Associate shall provide documentation upon request in relation to performance under this section.
- 2.2 Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- 2.3 Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
- 2.4 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of law or this Agreement.
- 2.5 Business Associate shall report to Covered Entity any known Security Incident or any known use or disclosure of PHI not permitted by this Agreement.
- 2.6 Effective September 23, 2009 or the date this Agreement is signed, if later, Business Associate shall do the following in connection with the breach notification requirements of the HITECH Amendment:
- 2.6.1 If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.402, Business Associate shall notify Covered Entity without unreasonable delay but no later than ten (10) calendar days after discovery. For this purpose, “discovery” means the first day on which the breach is known to Business Associate or should have been known by exercising reasonable diligence. Business Associate shall be deemed to have knowledge of a breach if the breach is known or should have been known by exercising reasonable diligence, to any person, other than the person committing the breach, who is an employee, officer, subcontractor, or other agent of Business Associate. The

notification to Covered Entity shall include the following: (a) identification of each individual whose unsecured PHI has been breached or has reasonably believed to have been breached, and (b) any other available information in Business Associate's possession that the Covered Entity is required to include in the individual notice contemplated by 45 CFR 164.404.

- 2.6.2 Notwithstanding the immediate preceding subsection, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Covered Entity where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor, or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Covered Entity. In such case, Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the affected individual(s). Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.3 Where a breach of unsecured PHI involves more than five hundred (500) individuals and was committed by the Business Associate or its employee, officer, subcontractor, or other agent or is within the unique knowledge of Business Associate as opposed to Covered Entity, Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the media. Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.4 Business Associate shall maintain a log of breaches of unsecured PHI with respect to Covered Entity and shall submit the log to Covered Entity within thirty (30) calendar days following the end of each calendar year, so that the Covered Entity may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.
- 2.7 Business Associate shall ensure that any agent or subcontractor to whom it provides PHI, received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such information. Business Associate shall ensure that any such agent or subcontractor implements reasonable and appropriate safeguards to protect Covered Entity's PHI.
- 2.8 Business Associate shall provide reasonable access, at the written request of Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed in writing by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- 2.9 Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs in writing or agrees to pursuant to 45 CFR 164.526.
- 2.10 Following receipt of a written request by Covered Entity, Business Associate shall make internal practices, books, and records reasonably available to the Secretary in order to determine Covered Entity's compliance with the Privacy Rule. The afore mentioned materials include policies and procedures and PHI relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity.



- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures, to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures PHI from an Electronic Health Record in accordance with the HITECH Amendment.
- 2.12 Following receipt of a written request by Covered Entity, Business Associate shall provide to Covered Entity or an Individual information collected in accordance with Section 2 to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment.

**§3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.** Business Associate may use and disclose PHI as set forth in this Section.

- 3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in the underlying service agreement between Covered Entity and Business Associate, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. If no underlying service agreement exists between Covered Entity and Business Associate, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity for the purposes of payment, treatment, or health care operations as those terms are defined in the Privacy Rule, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 3.2 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law or Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that: (a) the disclosed PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person notifies the Business Associate of any known instances in which the confidentiality of the information has been breached.
- 3.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.5 Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

**§4. OBLIGATIONS OF COVERED ENTITY.**

- 4.1 Covered Entity shall notify Business Associate of any limitation(s) of Covered Entity in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2 Covered Entity shall notify Business Associate of any changes in or revocation of permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.3 Covered Entity shall use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, the Contract, and the Privacy Rule, until such PHI is received by Business Associate, pursuant to any specifications set forth in any attachment to the Contract.
- 4.4 Covered Entity shall manage all users of the services including its qualified access, password restrictions, inactivity timeouts, downloads, and its ability to download and otherwise process PHI.
- 4.5 The Parties acknowledge that Covered Entity owns and controls its data.
- 4.6 Covered Entity shall provide Business Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may affect Business Associate's use or disclosure of PHI. Covered Entity shall provide Business Associate with any changes in or revocation of permission to use or disclose PHI, to the extent the changes or revocation may affect Business Associate's permitted or required uses or disclosures. To the extent that the changes or revocations may affect Business Associate's permitted use or disclosure of PHI, Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522. Covered Entity may effectuate any and all such notices of non-private information via posting on Covered Entity's web site.

**§5. EFFECT OF TERMINATION.**

- 5.1 Except as provided in Section 5, upon termination of this Agreement or the Contract, for any reason, Business Associate shall return or destroy (at Covered Entity's request) all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
- 5.2 If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon receipt of written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI, which shall be for a period of at least six (6) years.

**§6 MISCELLANEOUS.**

- 6.1 This Agreement is effective when the Contract is executed or when Business Associate becomes a Business Associate of Covered Entity and both Parties sign this Agreement, if later. However, certain provisions have special effective dates, as set forth herein or as set forth in HIPAA or the HITECH Amendment.
- 6.2 **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- 6.3 **Amendment.** The Parties agree to take action to amend this Agreement as necessary for Covered Entity to comply with the Privacy and Security requirements of HIPAA. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.
- 6.4 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement shall survive the termination of this Agreement and/or the Contract.

**EXHIBIT III**

**REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO COUNTY PII**

**(Personally Identifiable Information)**

Exhibit III governs the requirements for Contractors with Access to Personally Identifiable Information (PII).

**1. DEFINITIONS**

- 1.1 **Security Breach** means the unauthorized access, acquisition, theft, or disclosure of PII.
- 1.2 **PII** (Personally Identifiable Information) means information that can be used to identify an individual, either alone or when combined with other personal or identifying information. PII includes, but is not limited to, a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver's license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information as well as the first name or first initial and last name linked to a social security number, driver's license or state personal identification card or financial account number in combination with a code or password that would permit access to a person's financial account(s) and as otherwise may be defined by state or federal laws governing the unauthorized access to personal information, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts.

**2. OBLIGATIONS**

- 2.1 Contractor shall not use or disclose PII other than as permitted or required by this Contract or as required by law.
- 2.2 Contractor shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PII that it creates, receives, maintains or transmits on behalf of the County.
- 2.3 Contractor shall mitigate, to the extent practicable, any harmful effect known to Contractor of the use or disclosure of PII in violation of law or this Contract.
- 2.4 If Contractor or Contractor Employees discover a Security Breach, Contractor shall notify the County without unreasonable delay, but no later than within forty-eight (48) hours of discovery. For this purpose, "discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employees. The notification to the County shall include the following: (a) describe the

Security Breach in general terms; (b) describe the type of personal information that is the subject of the Security Breach; (c) identify each individual whose PII has been breached or has reasonably believed to have been breached; (d) describe in general terms, what Contractor has done to prevent additional Security Breaches; and (e) provide any other available information in Contractor or subcontractor's possession that may be necessary to comply with Security Breach notification laws.

- 2.5 If the County determines it will provide the notice of the Security Breach to the affected individuals and/or to governmental authorities, Contractor shall reimburse the County for: (a) its costs in notifying the affected individuals; (b) the cost of third-party credit and identify monitoring services to each of the affected individuals with compromised PII for no less than twenty-four (24) months following the date of notification to each individual; and (c) costs associated with the Security Breach, including but not limited to any costs incurred by the County in investigating and resolving the Security Breach, including reasonable fees associated with such investigation and resolution. Without limiting Contractor's obligations of indemnification as described in the Contract, Contractor shall indemnify, defend, and hold harmless the County for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the County in connection with the Security Breach. Contractor shall reimburse County for the applicable costs described above within thirty (30) days of receipt of an itemization of costs incurred by the County because of the Security Breach.
- 2.6 Within ten (10) calendar days of its discovery of the Security Breach, Contractor shall provide the County with a detailed plan describing the measures Contractor will undertake to prevent a future Security Breach. The County shall have the right to audit, inspect and test Contractor's new safeguards put in place because of the Security Breach. Contractor shall be responsible for recreating lost County Data in the manner and on the schedule set by the County without charge to the County.

**EXHIBIT IV**

**REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO CJIS DATA**

**(Criminal Justice Information Security)**

Exhibit IV governs the requirements for Contractors with Access to Criminal Justice Information governed by the CJIS Security Policy of the FBI.

**1. Definitions**

- 1.1 **Criminal Justice Information (CJI)** means data or information governed by the CJIS Security Policy.
- 1.2 **Criminal Justice Information Services (CJIS)** means the Criminal Justice Information Services, a division in the Federal Bureau of Investigation (FBI) that sets a minimum standard of security requirements to protect and safeguard CJI.
- 1.3 **CJIS Security Policy** means the Policy that governs the security of CJI. The CJIS Security Policy provides guidance for the creation, viewing, modification, transmission, dissemination, storage, and destruction of CJI. This Policy applies to every individual—contractor, private entity, noncriminal justice agency representative, or member of a criminal justice entity—with access to, or who operate in support of, criminal justice services and information.

**2. Obligations**

Contractor shall comply with the current version of the CJIS Security Policy, which may be amended from time to time by the CJIS Advisory Policy Board of the FBI. A link to the current FBI standards is available at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

**EXHIBIT V**

**FEDERALLY FUNDED CONTRACT REQUIREMENTS**

Exhibit V sets forth additional provisions for all federally funded contracts. To the extent that this Contract is funded, in whole or in part, by any federal award, the following provisions apply:

1. **Termination.** In addition to the termination rights set forth in Section 4 of this Contract, the County may terminate this Contract, in whole or in part, for cause upon notice to Contractor if Contractor breaches any duty or obligation in the Contract and fails to cure the breach, to the County's satisfaction, if applicable.
- 1.1 **Right to Cure.** If the Contractor breaches this Contract, and the County, in its sole discretion, determines that the breach is curable, then the County must provide the Contractor with written notice of the breach and a time period (not less than thirty (30) Days) to cure the breach. The notice of breach and opportunity to cure do not apply in the following circumstances: (1) for successive or repeated breaches; (2) if the County determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property; or (3) if the County terminates the Contract under this Section or Section A above. The effective date for termination or cancellation shall be clearly stated in the written notice.
- 1.2 **Termination Deemed for Convenience.** If the County terminates the Contract for cause and it is determined, for any reason, that Contractor was not in breach of Contract, then the termination for cause shall be deemed a termination for convenience, effective as of the same date specified in the notice of breach.
2. **Contractor's Obligations Upon Termination for Cause.** If the Contract is terminated for cause, the County may require Contractor to pay all costs incurred by the County in terminating the Contract, including but not limited to, administrative costs, reasonable attorneys' fees, court costs, and any reasonable additional costs the County may incur to procure the Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages and cannot be excluded by any other terms included in this Contract; however, such costs shall not exceed 50% of the County's financial obligation under this Contract.
3. **Compliance with Laws.** Contractor shall comply with the following, if applicable:
  - 3.1 The Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction");
  - 3.2 The Copeland "Anti-Kickback" Act (40 U.S.C. 3145 *et seq.*), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States");

- 3.3 The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5);
- 3.4 The requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency;
- 3.5 All applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387);
- 3.6 All mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*); and
- 3.7 The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 *et seq.*)
- 3.8 The requirements of 2 CFR 200.323 (Procurement of recovered materials), including, but not limited to, section 6002 of the Solid Waste Disposal Act, as amended, and 40 CFR Part 247.
- 3.9 The requirements of 2 CFR 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment).
- 3.10 The requirements of 2 CFR 200.322 (Domestic preferences for procurements).
- 3.11 The requirements and obligations imposed on contractors in 2 CFR Appendix II to Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards).
- 4. **Debarment and Suspension.** Contractor certifies that it is not listed on the government-wide Excluded Parties List System in the System for Award Management (SAM). Contractor must promptly notify the County, if Contractor is listed in SAM at any time during the term, renewal, or extension of this Contract. If Contractor is listed in SAM, the County may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor.
- 5. **Equal Employment Opportunity.** If this Contract meets the definition of "Federally Assisted Construction Contract" under 41 CFR Part 60-1.3, then during the performance of this Contract, Contractor agrees as follows:
  - 5.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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 setting forth the provisions of this nondiscrimination clause.

- 5.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 5.3 The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 5.4 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5.5 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5.6 The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 5.7 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 5.8 The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States

**EXHIBIT VII**

**LICENSE FOR USE OF COUNTY SERVICEMARK**

County grants to Contractor the non-exclusive right to use its Servicemark (hereinafter “Mark”), described and listed in the Servicemark Guidelines (below), for programs and activities that are directly related to the Deliverables and governmental services provided by the County.

The Mark may be used on: (Applicable if Checked):

- ☐ Printed materials
- ☒ Electronic materials
- ☒ Contractor’s website: [[www.FileTrail.com](http://www.FileTrail.com)]

Contractor shall not use the Mark for any other purpose.

The Mark must be used by Contractor as shown in the Servicemark Guidelines, with no variations of color, font or proportion. Contractor acknowledges that the County has intellectual property rights in the Mark. Nothing in this Contract gives Contractor any right, title, or interest in the Mark. Contractor may not take any action that will interfere with County’s rights in the Mark.

The County may terminate Contractor’s rights under this Exhibit if County notifies Contractor it has breached the terms of this Exhibit and Contractor fails to cure the breach within ten (10) business days of notice of breach. Following termination of this Exhibit, Contractor shall have ten (10) business days to remove the Mark from the materials and/or website authorized for use above. Contractor shall provide County with written confirmation that such actions have been taken. Upon termination of the Contract, Contractor shall cease all use of the Mark.

## OAKLAND COUNTY SERVICEMARK GUIDELINES

The Guidelines for proper use of the Mark provided to the Contractor are as follows:

# OAKLAND COUNTY, MICHIGAN

## LOGO BRAND STANDARDS

### PRIMARY LOGO

Oakland County has two logos that can be used interchangeably. Use the Horizontal Two Trees logo as your default choice. This is our primary logo. The Stacked Logo can be used whenever space or size is a consideration in your publication. Either logo is acceptable for all Oakland County publications.

However, **only one style of logo may be used per publication**. For instance, if you have the horizontal logo on the front of a publication, you can't use the stacked logo elsewhere in the document.

Pick one logo style for each publication and use it throughout, do not mixed styles.

#### HORIZONTAL "TWO TREES" LOGO



#### STACKED LOGO



### LOGO VARIATIONS

Logos should appear in full color when used in a full color design, whenever possible. However, if the publication requires a single color version of the logo, choose either all-black or all-white. No other color is acceptable.



### BRAND COLORS

The primary Oakland County logos use the following brand colors.

PMS 347  
CMYK 84, 15, 78, 2  
RGB 0, 154, 102  
HEX #009A66

PMS Black C  
CMYK 0, 0, 0, 100  
RGB 0, 0, 0  
HEX #000000

Accent colors for the brand are pulled from two other major servicemarks for Oakland County. These colors may be used as secondary colors in publications.

Destination Oakland Blue  
PMS 2825 | CMYK 85, 21, 0, 0 | RGB 0, 158, 222



Prosper Orange  
PMS 715 | CMYK 0, 54, 87, 0 | RGB 246, 141, 46



### WHITE SPACE

A prescribed amount of space around the logo must be maintained at all times.



### QUESTIONS

For questions or clarification on these brand standards, please contact:

Pam Tremble  
Graphic Designer  
County Executive Administration  
(248) 858-8964 | tremblep@oakgov.com



Adobe Swatch Exchange  
The official .ase file is available upon request

Do not provide copies to a third party of any artwork provided to you by County and referenced in this Exhibit without the express consent of County.

## G2G MARKET PLACE SERVICEMARK GUIDELINES

The Guidelines for proper use of the Mark provided to the Contractor are as follows:

### G2G MARKET PLACE

#### Standard Logo

The G2G Market Place logo appears to the right. It is the primary element of the G2G Market Place visual identity and must appear on all official documentation or sign involving G2G Market Place.



### LOGO USAGE

A prescribed amount of space around the logo should be maintained at all times. The space should be equal to or greater than the width of 1/4".



### MINIMUM LOGO SIZE



Minimum logo width 3 inches and height is 1 inch.

### COLORS

CMYK 82.5.97.0

RGB 0.169.80

HEX #00a950

CMYK 0.0.0.100

RGB 0.0.0

HEX #000000

### COLOR VARIATIONS

For 1-color print jobs, or when design dictates the logo may be used in all black or all white.



### LOGO VARIATIONS

Below are alternate "stacked" logo options. They are shown in full color, all black, and all white versions.



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**EXHIBIT VIII**

**ACKNOWLEDGEMENT OF INDEPENDENT EMPLOYMENT STATUS**

I, \_\_\_\_\_, acknowledge that I am an employee or subcontractor of

(Name of Contractor's Company): \_\_\_\_\_

(hereinafter "Company") under Contract #: \_\_\_\_\_, and

- At all times during my assignment to Oakland County, I will remain an employee or subcontractor of the Company
- I am not an employee of Oakland County; and,
- I may not represent myself as an employee of Oakland County.

**I understand that:**

- Company is responsible for establishing the conditions of my assignment to Oakland County; and
- Company is solely responsible for compensating me for my services; and
- I understand and agree that as an employee or subcontractor of Company, I am not eligible to participate in or accrue any benefits under any of Oakland County's employee benefits or benefit plans, including retirement, deferred compensation, insurance (including without limitation: health, disability dental and life insurance), vacation pay, and any other similar plans and programs. However, if I am a retired County employee, I may receive vested post-employment benefits such as retiree healthcare and pension benefits from Oakland County. I understand that the post-retirement benefits I receive from the County cannot be enhanced by my work for the above Contractor.

**I acknowledge that:**

- I have no copyright, patent, trademark or trade secret rights to any Oakland County Intellectual Property or any work developed by me while providing services to Oakland County; and,
- If I will be given access to the County Network, I will comply with the Oakland County Electronic Communications and Use of Technology Policy.
- I will comply with and sign the FBI Criminal Justice Information Services Security Addendum if I will have access to CJIS Data.

**Signed:** \_\_\_\_\_

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

**Print Name:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

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

(Contractor or Contractor Employee must provide a copy of completed form to the Purchasing Division –at [Purchasing@oakgov.com](mailto:Purchasing@oakgov.com) to receive a County Identification badge.)

**EXHIBIT IX**

**SCOPE OF CONTRACTOR DELIVERABLES/FINANCIAL OBLIGATIONS**

**1. Introduction**

- 1.1. Contractor shall provide County with a cloud-based record management system. The FileTrail System ("System") will provide physical record management for County files.
- 1.2. Contractor shall:
  - 1.2.1. Implement the System and provide the deliverables described herein.
  - 1.2.2. Integrate the System with County's existing Single Sign On system.
  - 1.2.3. Provide training. See Schedule below.
  - 1.2.4. Implement the System within 180 days after the Contract is executed. This is dependent upon the County having personnel available for decision making implementation meetings. Project start date will be determined by availability of project management team staff.
  - 1.2.5. Provide County with their Disaster Recovery Plan.

**2. System Features**

The System implemented by Contractor shall:

**2.1. Management/Tracking**

- 2.1.1. Provide records management features and functions commonly used by municipalities. Including data entry for files and boxes
- 2.1.2. Provide ability to search for records by any field
- 2.1.3. Provide ability storage ID and record type
- 2.1.4. Provide ability to search by partial numbers or partial words

**2.2. Bar Coding/Labeling/Data Entry**

- 2.2.1. Provide ability to use a barcode reader to check out/in records
- 2.2.2. Provide ability to update/change box numbers without having to re-enter
- 2.2.3. Provide ability to track records using alpha or numeric fields
- 2.2.4. Provide ability to enter relevant container date including ID and storage location
- 2.2.5. Provide ability to delete a record ID and re-enter into the system

**2.3. Retention Management/Check In-Check Out**

- 2.3.1. Provide ability to support document retention schedules/workflows
- 2.3.2. Provide ability to check out an individual file from a stored box



## **2.4. Data Migration**

- 2.4.1. Provide ability to read existing barcodes created from previous program OmniRim
- 2.4.2. Provide ability to put boxes in an "On Hold" status, and prevent destruction

## **2.5. System Administration**

- 2.5.1. Provide ability to add users
- 2.5.2. Provide ability to assign roles and privileges
- 2.5.3. Provide ability to define organizational taxonomy, user defined fields, and naming conventions.

## **2.6. System Reports**

- 2.6.1. Provide ability to create, query, export and print reports.
- 2.6.2. Provide ability to generate reports on:
  - 2.6.2.1. Check in and check out
  - 2.6.2.2. Generate a report by date range for new records, and/or new items, that are created with storage ID options using barcodes or no barcodes
  - 2.6.2.3. Current inventory, you can filter
  - 2.6.2.4. Generate a report by record type code listing
  - 2.6.2.5. Generate report for items permanently destroyed.
  - 2.6.2.6. Ability to define and generate ad-hoc reports including date and time parameters.

## **2.7. Single Sign-On.**

Contractor will implement authentication using Federated Services as designated by County's Identity and Access Management (IAM) solution (e.g. SAML or 3<sup>rd</sup> party cloud authentication)

## **3. System Implementation**

Contractor shall use the steps described below to implement the System. FileTrail has specific methodology that guarantees the success of a project for the County. Many of the steps match those listed below. The complete package will be used as a working document during implementation.

### **3.1. Initial Planning**

#### **3.1.1. Project Kick Off and Testing Scope Review**

Contractor's Project Manager shall conduct a conference call with County to initiate the various activities in the project.

The kick off meeting shall include, at a minimum, the following items for discussion:

- 3.1.1.1. Identify points of contact for technical and administrative activity, email, mobile telephone, as well as after-hours contact guidelines in order for Contractor to create the Project Communication Plan.
- 3.1.1.2. Introduce individuals from the County and Contractor who will be performing the work and review roles and responsibilities.
- 3.1.1.3. Review a draft implementation Project Plan provided by Contractor.
- 3.1.1.4. Review this Scope of Services.
- 3.1.1.5. Discuss a tentative timeline for the project.
- 3.1.1.6. Identify the information transfer process for data that should remain restricted or confidential.

County and Contractor will review the initial project work plan, schedule, and Communications Plan. County and Contractor will refine detailed project plans, schedules, deployment and training strategies, and begin to refine full project planning. The Project Kick Off Meeting will define any critical business schedule or deployment considerations that might impact the project's timeline.

If it is discovered during the kick-off meeting that modifications to the testing are required, the Parties will review the Scope of Services and make agreed upon changes through an amendment to the Contract.

### 3.1.2. **Information Gathering**

Contractor will communicate with County to obtain all necessary information to successfully implement the System. The Information Gathering Phase will define the functional and technical requirements for implementation of the project. This shall include identifying:

- 3.1.2.1. The integrations required with other systems operated by County, including which data must be integrated into the System.
- 3.1.2.2. The types and requirements for reports required by County.
- 3.1.2.3. The technical support that will be available during System set-up through post-implementation.
- 3.1.2.4. Potential dates for training, numbers of County staff to train and the County location that will be used for training.

### 3.1.3. **Deliverables**

Contractor shall provide County with:

- 3.1.3.1. A **Detailed Project Plan** including activities, tasks, and milestones including the date the System will go live and tasks assigned to each individual that

will be used to build a project implementation schedule. The Detailed Project Plan will be used by the County to build a Master Project Schedule with dates and deliverables. The Detailed Project plan will be maintained and updated by Contractor on a continuous basis and provided to County to update the Master Project Schedule.

- 3.1.3.1.1. FileTrail will utilize Smartsheet® project management software to provide the Country with updated timelines, and project status upon request.
- 3.1.3.2. A **Design Document** that Contractor shall review with County
- 3.1.3.3. A project **Communications Plan** that will be used by County and Contractor during the term of the Contract.
- 3.1.3.4. A list of **Specifications**, which shall include the hardware specifications, the required licensed software and browser settings.
- 3.1.3.5. **Minutes** from the Project Management Meetings will be provided in an agreed upon format for the life cycle of the project.
- 3.1.3.6. A detailed **Checklist** of the tasks County and Contractor need to perform to implement the System. See 3.1.3.1.1.1
- 3.1.3.7. A **User Acceptance Test Plan** that will be used for acceptance of the System and integration of each phase of the project. The plans will guide unit testing during each phase of the project.
- 3.1.3.8. A **User Training and Transition Plan** on how to train end-users and administrators as well as a plan to transition to County.
- 3.1.3.9. A **Closeout Notification** email that will contain a summary of the Deliverables provided by Contractor to County for final acceptance of the System.

### 3.2. Configuration Planning

Contractor and County shall work together to confirm:

- 3.2.1. The Internet and firewall settings necessary for hosting the System are in place.
- 3.2.2. Contractor will use complete database backup from current County system for data migration testing
- 3.2.3. The method that will be used by County to report support issues to Contractor. See project forms.

### 3.3. Installation and Configuration

Contractor shall:

- 3.3.1. Test the installed System.
- 3.3.2. Fine tune and adjust user profiles.
- 3.3.3. FileTrail conducts nightly backups of its systems. FileTrail conducts a yearly disaster recovery test as part of its business continuity SOP.

**3.4. Implementation**

Contractor shall:

- 3.4.1. Assist County with configuring reports.
- 3.4.2. Provide County with Quick reference sheets for main functions of the System.
- 3.4.3. Provide County with reference guides that explain all of the features and functions of the System, including County specific customizations.
- 3.4.4. Provide County with a Quality Assurance (QA) environment for User Acceptance Training and a production environment for when the System is implemented.

**3.5. Training**

Contractor shall:

- 3.5.1. Provide County with user guides and train the trainer session material that includes users of the Contractor's system.
- 3.5.2. Provide training virtually (train-the-trainer) for all staff are identified by County required to take the training classes.
- 3.5.3. Training shall cover all functions and features of the System.
- 3.5.4. Provide any additional training materials shall be provided in Adobe PDF, MSWord format and any other format as agreed upon by County.

**3.6. User Acceptance Testing**

Contractor shall:

- 3.6.1. Meet with County to review the status of the System Implementation and review the User Acceptance Test Plans.
- 3.6.2. Provide User Test and Acceptance Plans that describe data input to be passed to the application modules and integrations, test procedures, expected system performance, and the output or results that should be received if the applications and integrations are functioning properly.
- 3.6.3. User Acceptance Testing from contractor is system-neutral and is not changed. County-specific testing plans are to be generated by the County
- 3.6.4. Use the Test and Acceptance Plans to conduct integration and stress tests. These will demonstrate to County that the configurations were implemented correctly and that the System's modules are functioning and performing properly to meet the functional requirements in the Hosted environment and will indicate if there are any outstanding issues that need to be resolved.
- 3.6.5. Prioritize any issues that relate to requirements identified in this document.
- 3.6.6. Review all support requests to ensure all issues identified as System bugs are addressed.

**3.7. Deployment**

Contractor shall:

3.7.1. Monitor the issues reported by County.

3.7.2. Have conference calls with County as necessary to resolve outstanding issues.

- 3.8. Integration Framework and Testing** Contractor shall migrate data to the System from the legacy databases prior to the Go-live date. County shall review the data to ensure it migrated accurately. Contractor shall run test reports to verify if the data from the legacy databases is migrating correctly.

#### 4. Pricing

Cost Description	Quantity	Price
Implementation/Professional Services (include all costs to ensure the solution is fully installed and functional for Oakland County)		
Service fee during implementation	1	\$10,000
<b>Implementation/Professional Services</b>		\$35,240
<b>Training</b>		\$0
<b>Total Implementation One Time Cost</b>		<b>\$45,240</b>
<b>On-Going Costs</b>		
<b>Annual Subscription Fee (Support/Maintenance)</b>		
Vendor's \$38,400 base cost minus the \$14,400 OmniRIM conversion discount.		
<b>Total On Going Costs</b> \$24,000 annual x 3 years		
Billed annually: \$24,000		\$72,000
<b>Other Recurring Costs (as needed)</b>		
Data storage above 750 GB or 1 TB would be charged at \$25/25GB/mo.		
As needed, the dev environment can be kept at a cost of \$500/mo.		
Additional data rates same as above.		
\$500/mo. Change from File Trail for QA environment for UAT testing.		
<b>Total Costs</b>		<b>\$172,659</b>

## **5. Payment**

- 5.1.** County shall provide payment to Contractor upon receipt of invoice for Implementation Costs as follows:
  - 5.1.1.** Half ( $\frac{1}{2}$ ) of the Total Implementation Costs upon execution of the Contract  
Which is \$17,620.
  - 5.1.2.** One-fourth ( $\frac{1}{4}$ ) of the Total Implementation Costs upon receipt of the Detailed Project Plan described in Section 3.  
Which is \$ 8,810
  - 5.1.3.** One-fourth ( $\frac{1}{4}$ ) of the Total Implementation Costs upon System Acceptance by County. System Acceptance shall be based upon the final User Test and Acceptance Plan documentation approved by County.  
Which is \$ 8,810
- 5.2.** The County will pay software costs to Contractor upon contract execution. The County will provide payment to Contractor upon receipt of invoice.
- 5.3.** The County will pay for barcode scanner upon receipt of scanner and receipt of invoice.
- 5.4.** Support and maintenance are included in subscription fee. Software will be accessible all during project by County staff. County shall provide payment to Contractor for Support and Maintenance beginning with the first month that the System is accepted by County.

## **6. Roles and Responsibilities**

### **6.1. Contractor Responsibilities**

- 6.1.1.** Contractor will be responsible for providing the services and deliverables outlined in this document.
- 6.1.2.** Contractor shall have appropriate staff available during conference calls.

### **6.2. County Responsibilities – County shall:**

- 6.2.1.** Have County personnel available during regular business hours to assist in the System implementation.
- 6.2.2.** Ensure that the computers and tablets meet the minimum hardware specifications and have the necessary software installed.
- 6.2.3.** Ensure that the computers and tablets are properly licensed and the browsers are properly configured.
- 6.2.4.** Ensure that any ancillary access devices such as signature pads, printers and Wi-Fi are configured.

## **7. Service Level Commitment & Support Deliverables**

### **7.1. Contractor shall provide County with:**

- 7.1.1. A live person to telephone support;
- 7.1.2. Monitored email support;
- 7.1.3. Remote assistance using Microsoft Teams.
- 7.1.4. Ongoing security patches and system health check.
- 7.1.5. Meet response times associated with service-related incidents.
- 7.1.6. Appropriate notification to County prior to all scheduled maintenance.
- 7.1.7. Provide a target service availability of 99.95%.

### **7.2. County shall:**

- 7.2.1. Have a representative available to communicate with Contractor when Contractor is working to resolve a service-related incident or request; and
- 7.2.2. Isolate and rectify technical faults within their own Network infrastructure, equipment, and software.

## **8. Service Management**

### **8.1. Planned Service Outage Notifications**

- 8.1.1. Routine maintenance is performed periodically schedule is provided to the County via email 30 days 2 weeks prior to the maintenance event.
- 8.1.2. This is a planned service outage to conduct necessary maintenance and upgrades to software and any released non-critical updates (e.g. Microsoft windows patches). Contractor will notify the County in a reasonable time frame on all planned service outages.
- 8.1.3. In circumstances where an emergency service outage is required, the Contractor reserves the right to undertake the service outage without notice. In such cases, the Contractor will endeavor to notify the County prior to any service outage. An example of such case is where a third party has released a security patch that is a critical security concern to be applied as soon as possible. The County will provide to Contractor a designated email address.

### **8.2. Service Availability**

Contractor shall provide:

- 8.2.1. 1-800-310-0299 number is provided for support during local 8AM-5PM business hours EST.
- 8.2.2. Email support for non-urgent / critical issues to: [helpdesk@filetrail.com](mailto:helpdesk@filetrail.com)



8.2.3. Help support functionality within the application

**8.3. Service Credits**

8.3.1. Service credits outlined in Service Level Agreement section

## SERVICE LEVEL AGREEMENT

### FILETRAIL RESPONSIBILITIES

This clause outlines FileTrail's responsibilities under a contract.

FileTrail agrees to:

- To respond to issues which have been reported using accepted methods.
- Provide an incident number for each unique issue.
- React to incidents within agreed service level timescales outlined in this document.
- Provide access to HelpDesk software where the open issues and a history of each issue action are maintained.
- Provide a gotomeeting.com account for remote access to use in research and resolution at no cost to Client.
- Provide support for the current Minor Release and previous Minor Release of the software.
- Provide remote assistance with the application of upgrades and patches, if requested.
- Maintain to its best ability a 99.9% uptime for the services. This does not include maintenance times for the service. Client will be notified when maintenance will take place and it will be done on weekends and non-business hours.

### CLIENT RESPONSIBILITIES

Client agrees to:

- Report issues via phone, helpdesk software, or helpdesk email. Calls or emails to individuals may result in delayed service while that person is traveling or taking time off work.
  - Maintain one to three nominated personnel responsible for administrating the system and managing open issues with support staff.
  - Report issues with as much detail as reasonably possible, including whether or not the issue can be reliably reproduced. Our helpdesk system accommodates post attachments for viewing, and we encourage screenshots, sample data, or other files that will help with research and resolution.
  - Communicate a reasonable and accurate priority (P level) to support staff when reporting the issue.
  - Accommodate remote access via gotomeeting.com or provide similar service as a substitute at no cost to FileTrail.
  - Ensure that new users are properly trained in the correct use of the application.
  - Ensure that technology infrastructure meets at least minimal operational requirements as defined by FileTrail for the current release.
  - Provide information or data as requested to aid incident resolution.
  - Immediately advise FileTrail of any known changes which affect the incident.
- Notify FileTrail of any proposed re-installation or move of the software at least 10 business days in advance.

If the Filetrail production environment becomes inaccessible to for a period of eight consecutive hours or more, then Filetrail will reimburse client a percentage of the monthly fees equivalent to the

duration of the outage, i.e. if production is down for 24 hours, then File Trail will refund 1/30th of the monthly fee. The reimbursement can take the form of a credit note.

## **SERVICE LEVELS**

Software faults reported may be classified by Client in accordance with the criteria below.

- |                             |  |
|-----------------------------|--|
| <b>P1- Critical Fault:</b>  | An emergency situation in which the Supported Software is significantly affecting the business of Client.  |
| <b>P2 - Material Fault:</b> | A material fault in the Supported Software resulting in loss of functionality or degraded performance, but without significantly affecting the business of Client. |
| <b>P3 - Minor Fault:</b>    | A minor fault of the Software, causing minor inconvenience and little or no loss of functionality or performance.  |

FileTrail shall respond to Client request for Support services as below.

- |                               |   |
|-------------------------------|---|
| <b>P1- Critical Failure:</b>  | Respond to Client with a work-around or plan for resolving the Software fault within 2 business hours of Client request. FileTrail shall dedicate all necessary resources on a priority basis to resolve the Software fault.  |
| <b>P2 - Material Failure:</b> | Respond to Client with a work-around or plan for resolving the Software fault within one business day of Client request. FileTrail shall assign a reasonable level of resource in order to promptly resolve the Software fault within Maintenance Hours.                  |
| <b>P3 - Minor Failure:</b>    | Respond to Client with a work-around or plan for resolving the Software fault within two business days of Client request. FileTrail shall use all reasonable endeavors to ensure the Software fault is resolved within period estimated by FileTrail for such resolution. |

## **ESCALATION PROCESS**

Calls will be escalated automatically within the Helpdesk system however, should Client wish to escalate an issue within FileTrail the following route should be followed.

- |                 |                                 |
|-----------------|---------------------------------|
| <b>Initial:</b> | FileTrail's Helpdesk Supervisor |
| <b>Second:</b>  | FileTrail's Support Manager     |
| <b>Third:</b>   | FileTrail's Senior Management   |