



OAKLAND COUNTY EXECUTIVE, DAVID COULTER

PURCHASING

Purchasing

248-858-0511 | [purchasing@oakgov.com](mailto:purchasing@oakgov.com)

Buyer: WKP

CONTRACT NUMBER: 010319


Event # Oak 0157

CONTRACT between the COUNTY OF OAKLAND and CONTRACTOR

Not To Exceed Amount: \$500,000.00		Effective Date: 11/1/2023	Expiration Date: 11/1/2028
Contract Description:	<b>Privileged Access Management</b>		
Contractor Information:		Contract Administrator (If Different):	
People Driven Technology Inc 6300 Venture Hills Blvd SW Byron Center, MI 49315 Vendor No: 40300		Joe Zanchetta <a href="mailto:zanchettaj@peopledriven.com">zanchettaj@peopledriven.com</a>	
Purchasing Office Information:		Contract Administrator Oakland County Using Department:	
Wendy Pucher Oakland County 2100 Pontiac Lake Rd 41W Waterford MI 48328-2762 248-858-0511 <a href="mailto:purchasing@oakgov.com">purchasing@oakgov.com</a>		Rod Davenport Chief Information Officer 1200 N Telegraph Rd 49West Pontiac, MI 48341 <a href="mailto:davenportr@oakgov.com">davenportr@oakgov.com</a>	

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:   
[Joe Zanchetta \(Nov 16, 2023 18:31 EST\)](#)

**FOR THE COUNTY:**

SIGN:   
[Rod Davenport \(Nov 17, 2023 09:01 EST\)](#)  
Contract Administrator

SIGN:   
[Scott Guzy \(Nov 17, 2023 09:11 EST\)](#)

Scott N. Guzy, CPPO, MBA, Purchasing Administrator

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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/servicemark, 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 one percent (1%) 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 (“U.S.”). 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 may permit its Contractor Employees to access County Data remotely within the U.S. but 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, County Data, and Contractor's network/system(s) used to access 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. The County shall have the right to audit, inspect, and test Contractor's network and system security.

- 13.3. **Security Reporting.** Contractor shall provide County with its SOC2 Type 2 report, which must be assessed by an independent auditor, or provide County with a completed County security questionnaire if Contractor does not have a SOC2 Type 2 report. Contractor shall provide County with Contractor's SOC2 Type 2 report or the completed County security questionnaire, on or prior to the Effective Date of this Contract, and within five (5) Business Days of a written request by County during the duration of this Contract. County will not make more than one request per year for the Contractor's SOC2 Type 2 report or for the Contractor to provide County with a completed County security questionnaire, unless County has reasonable cause to do so. If Contractor has a SOC2 Type 2 report, Contractor shall keep its SOC2 Type 2 report up to date for the duration of this Contract.

**§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 CJI 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 VI**  
**SOFTWARE LICENSE**

(SOFTWARE LICENSE AND SUBSCRIPTION AGREEMENT BEGINS ON THE FOLLOWING PAGE)

## SOFTWARE LICENSE AND SUBSCRIPTION AGREEMENT

IMPORTANT – PLEASE REVIEW CAREFULLY THE TERMS OF THIS SOFTWARE LICENSE AND SUBSCRIPTION AGREEMENT. BY CLICKING “ACCEPTED AND AGREED TO,” CUSTOMER ACCEPTS AND AGREES TO THESE TERMS AND CONDITIONS.

This Software License and Subscription Agreement (this “Agreement”) is a contract between BeyondTrust Corporation, a Delaware corporation (“BeyondTrust”) and the other business entity executing this Agreement (“Customer”). BeyondTrust and Customer are also hereafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

This Agreement is effective as of the Effective Date, as that term is defined in Exhibit A (“Defined Terms”), which is attached to and made a part of this Agreement by this reference. Customer’s use, and BeyondTrust’s provision, of the “Software or Other Offerings” (as that term is defined in Exhibit A) is governed by the terms and conditions of this Agreement.

This Agreement includes the Standard Terms & Conditions below (“Standard Terms & Conditions”), Exhibit A, and any applicable Order, all of which are hereby incorporated into this Agreement by reference. Capitalized terms used but not defined in the Standard Terms & Conditions are defined in Exhibit A. In the event of a conflict between the terms of the Standard Terms & Conditions, Exhibit A and/or any applicable Order, the order of precedence shall be: (i) the Standard Terms & Conditions, (ii) Exhibit A, then (iii) the applicable Order.

### STANDARD TERMS & CONDITIONS

#### 1. ACCESS AND USE

**1.1 *ACCESS AND USE OPTIONS AND RESTRICTIONS.*** Software offered by BeyondTrust to Customer under this Agreement is either via (i) an On-Premise Software perpetual license or Subscription, or (ii) a Cloud Services Subscription, as specified in the applicable Order.

(a) ***License (applicable for On-Premise Software).*** For On-Premise Software that is licensed to Customer either on a perpetual basis or via a Subscription, as specified in the applicable Order, subject to the terms and conditions of this Agreement and Customer’s payment of all applicable Fees, BeyondTrust hereby grants to Customer a limited, non-exclusive, non-transferable, non-assignable, revocable, personal right and license in the Territory (defined below) to install and use the Software for internal use and in support of Clients (the “Permitted Use”), in accordance with the terms and conditions of this Agreement and as applicable and as specified on each Order, for the Subscription Term specified in the applicable Order (unless the applicable Order specifies a perpetual license), and limited to the number of deployed Instances, Assets, physical and virtual machine(s), and/or the physical location(s) specified in the applicable Order, and, in all cases, to use the Documentation provided in connection with such Software solely for the purpose specified in Section 1.2(a) below. “Territory” means worldwide unless otherwise agreed in the applicable Order (and subject always to Customer’s compliance with applicable export laws, regulations and restrictions).

(b) ***Cloud Services Subscription (applicable for cloud subscription offerings).*** For Software that is provided to Customer via a Subscription for Cloud Services, subject to the terms and conditions of this Agreement and Customer’s payment of all applicable Fees, BeyondTrust hereby grants to Customer a Subscription to access and use the Cloud Services in accordance with the terms and conditions of this Agreement, both for internal use and in support of Clients (the “Permitted Use”), for the Subscription Term specified in the applicable Order and consistent with the requirements and limited to the number of deployed Instances, Assets, physical and virtual machine(s), and/or the physical location(s) specified in the applicable Order, and, in all cases, to use the Documentation provided in connection with such Software solely for the purpose specified in Section 1.2(a) below. Customer may access the applicable Software through Cloud Services (instead of under an On-Premise Software license) solely to facilitate the use and administration of the applicable Software for the Permitted Use.

(c) ***Restrictions on Software or Other Offerings.*** All rights to Software or Other Offerings not expressly granted under this Agreement are hereby reserved to BeyondTrust, and no rights are granted by implication or otherwise. Without limiting the generality of the foregoing, Customer shall not (and Customer shall also ensure that Customer’s Personnel and Affiliates shall not): (i) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense any Software or Other Offering, including without limitation through any loan, encumbrance, or lease; (ii) access or use any Software or Other Offering or BeyondTrust’s Confidential Information to create a product or service similar to or competitive with any Software or Other Offering; (iii) time-share any Software or Other Offering or use such Software or Other Offering in a service bureau arrangement or for the benefit of any third party; (iv) permit or allow any person to remove any proprietary or other legend or restrictive notice on any Software or Other Offering or on any media containing such Software or Other Offering; (v) permit any person to reproduce any such media or Software or Other Offering except as specifically provided in this Agreement; (vi) use any Software or Other Offering to distribute or otherwise support any software or computer file that contains a virus, worm, Trojan horse, or other harmful component; (vii) use any Software or Other Offering for any illegal activity; (viii) use any Software or Other Offering to disrupt or interfere with any other networks, websites, or security; (ix) use any Software or Other Offering to infringe any third party’s intellectual property rights; (x) use any Software or Other Offering to distribute any objectionable material of any kind; (xi) use any Software or Other Offering to gain unauthorized access to computer systems or devices; (xii) use any Software or Other Offering under false pretense to gain access to a third party’s computer, network, or information; (xiii) in any manner or under any circumstances use, copy, modify, enhance, merge, reverse engineer, reverse assemble, decompile, disassemble or in any way alter any Software or Other Offering or any copy, adaptation, transcription, or merged portion thereof or otherwise attempt to derive source code therefrom; or (xiv) disclose to any third party the results of any benchmark or other tests of any Software

or Other Offering. Customer shall maintain all of BeyondTrust's copyright, trademark, and other notices on the Software, Hardware, and Documentation and shall reproduce all such notices on any and all partial or full copies thereof.

## **1.2 DOCUMENTATION & TEMPORARY USE SOFTWARE.**

(a) **Documentation.** Customer may access and use the Documentation solely in connection with the Permitted Use and to support use of the Software or Other Offerings as expressly authorized in this Agreement.

(b) **Beta & Evaluation Software (only if applicable).** BeyondTrust hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, revocable, personal right and license to install and use Beta Software and/or Evaluation Software (each as defined below) during the time period set forth on the applicable Order, or if no time period is stated, for 30 days from the effective date of the applicable Order. "Beta Software" refers to Software so designated as "Beta Software" on the applicable Order or provided to Customer for feedback by Customer to BeyondTrust. "Evaluation Software" refers to Software so designated as "Evaluation Software" on the applicable Order or provided to Customer for Customer's own internal evaluation purposes only. CUSTOMER IS NOT REQUIRED TO USE BETA SOFTWARE OR EVALUATION SOFTWARE. IF CUSTOMER DOES SO CHOOSE TO USE SUCH BETA SOFTWARE OR EVALUATION SOFTWARE, THEN NOTWITHSTANDING ANYTHING TO CONTRARY SET FORTH IN THIS AGREEMENT, THE FOLLOWING TERMS APPLY: (i) THE BETA SOFTWARE AND EVALUATION SOFTWARE ARE PROVIDED "AS IS," AND WITH ALL FAULTS, AND WITH NO PROMISE, REPRESENTATION, WARRANTY, OR INDEMNITY WHATSOEVER; (ii) BEYONDTTRUST HAS NO RESPONSIBILITY OR LIABILITY WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO BETA SOFTWARE OR EVALUATION SOFTWARE; (iii) Customer shall reasonably answer BeyondTrust's questions and requests regarding Customer's use of the Beta Software; and (iv) Customer shall use Evaluation Software only for internal evaluation purposes, to decide whether to purchase a subscription to the underlying Software. BeyondTrust may suspend or terminate the license granted in this Subsection 1.2(b) at any time and for any reason. Customer recognizes and agrees that Beta Software or Evaluation Software may disable itself after a predefined time period. If Customer provides any suggestions, recommendations, ideas, or other feedback (collectively, "Feedback") to BeyondTrust regarding the Beta Software, Customer hereby agrees that BeyondTrust may use and incorporate into the Software any Feedback that Customer provides to BeyondTrust, and Customer shall not be entitled to any compensation for such Feedback. Customer hereby grants to BeyondTrust, free of charge, all rights in and to the Feedback.

**1.3 SOFTWARE OR OTHER OFFERINGS IN GENERAL.** For clarification, Customer's Affiliates may access and use the On-Premise Software and Cloud Services subject to such Affiliates' adherence to and compliance with the terms and conditions of this Agreement. Customer shall be primarily responsible for any breach of this Agreement by any of Customer's Personnel or Affiliates. Customer's rights to use On-Premise Software in accordance with this Agreement are limited to object code. In its use of Cloud Services, Customer is solely responsible and liable for (1) preserving the secrecy of its usernames and passwords, and (2) any and all activity that occurs under Customer's account. Customer agrees that, to the extent that any applicable mandatory laws give it the right to perform any activity forbidden in this Agreement without BeyondTrust's consent in order to gain certain information about a Software or Other Offering, before exercising any such right, Customer shall first request such information from BeyondTrust in a writing detailing the purpose for which Customer needs the information. Only if BeyondTrust denies Customer's request (which BeyondTrust may do at its sole discretion) shall Customer exercise such statutory right.

## **2. ADDITIONAL SERVICES.**

**2.1 SUPPORT SERVICES.** BeyondTrust shall provide Support Services as a part of the Subscriptions for On-Premise Software and Cloud Services. Support Services shall begin on the date that, as applicable, BeyondTrust (i) delivers On-Premise Software to Customer, (ii) makes On-Premise Software available for download by Customer, or (iii) sends Customer a password for Cloud Services, and the Support Services shall continue for the remainder of the Subscription Term. For any On-Premise Software which is provided to Customer under a perpetual license and not under a Subscription, as specified in the applicable Order, upon expiration of the Support Term for the Support Services specified in the applicable Order, such Support Term shall automatically renew at BeyondTrust's then-current rates and terms for subsequent one (1) year periods, unless either Party provides the other Party with notice of its intent not to renew such Support Term at least thirty (30) days before expiration of the then-current Support Term period. If Customer elects not to extend the Support Term for the Support Services and later seeks to reinstate such Support Services, Customer shall pay to Beyond Trust all Fees for all Support Services that Customer would have paid to BeyondTrust as though such Support Term and Support Services had continued uninterrupted, in addition to the Fees applicable for the next subsequent Support Term. Customer shall pay to BeyondTrust the applicable Fees for Support Services in advance of any applicable renewal of the Support Term. Any and all Upgrades provided through the Support Services will become and be construed as a part of the Software immediately upon installation of such Upgrades.

**2.2 PROFESSIONAL SERVICES.** BeyondTrust shall provide, and Customer shall pay the Fees for, such professional services that BeyondTrust has agreed to provide ("Professional Services") as are specified in an Order specifically calling for "professional services". The professional services performed shall be of professional quality and consistent with generally accepted industry standards for services of a similar nature. Unless otherwise provided on the Order or agreed by the Parties in writing, all Professional Services must be able to be completed within one hundred eighty (180) days of the Order effective date. Unless otherwise agreed between the Parties in writing, the Fees for Professional Services do not include expenses incurred by BeyondTrust in providing such Professional Services. Customer shall reimburse BeyondTrust's reasonable and pre-approved travel and other expenses in connection with such Professional Services.

**2.3 E-LEARNING SERVICES.** If specified in an Order, BeyondTrust shall provide e-learning services related to the Software or Other Offerings that Customer receives pursuant to this Agreement ("E-Learning Services"), for up to one (1) year after execution of the applicable Order, to the extent that BeyondTrust makes such E-Learning Services generally available to its customers.

### 3. **TITLE & IP.**

**3.1 OWNERSHIP IN GENERAL.** The Software offered pursuant to this Agreement, and all copies thereof, are licensed (or otherwise made available and accessible as the case may be), not sold, and Customer receives no title to or ownership of the Software itself or any copies thereof. BeyondTrust retains exclusive ownership of the Software or Other Offerings, including any media on which they are provided to Customer, except to the extent that this Agreement expressly transfers title to Hardware in accordance with Section 3.4 below of this Agreement. Customer receives no intellectual property license: (a) to any Software or Documentation provided through Cloud Services; or (b) to any other Software or Other Offering. Customer shall not (i) make any assertion contrary to the preceding sentence, (ii) jeopardize BeyondTrust's proprietary rights in the Software or Other Offerings, or (iii) attempt to acquire any rights to the Software or Other Offerings, other than the limited rights which are expressly provided by BeyondTrust in this Agreement. Customer hereby acknowledges that the Software and Documentation are works copyrighted under United States federal copyright law and protected by other intellectual property rights and embody valuable confidential and secret information of BeyondTrust and its third-party licensors. BeyondTrust shall own all rights in any copy, translation, modification, adaptation, or derivation of the Software or Other Offerings or other items of BeyondTrust Confidential Information, including any improvement or development thereof, and Customer shall, and hereby agrees to, execute such assignment documents as BeyondTrust reasonably requests to perfect, confirm, or transfer all such ownership rights.

**3.2 CUSTOMER DATA.** BeyondTrust acknowledges that, as between BeyondTrust and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to Customer Data. Customer hereby grants to BeyondTrust a non-exclusive, royalty-free, worldwide license to transmit and store Customer Data and perform all acts with respect to Customer Data as may be necessary for BeyondTrust to provide the Software or Other Offerings to Customer.

**3.3 USE OF CUSTOMER DATA.** BeyondTrust shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the provision of Software and Other Offerings, and maintaining, supporting, evaluating, improving and/or developing new Software and Other Offerings. Notwithstanding the foregoing, BeyondTrust may disclose Customer Data as required by applicable law or by proper legal or governmental authority. BeyondTrust shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense, unless such action or notice is prohibited by applicable law or by proper legal or governmental authority. In any event, BeyondTrust will not use Customer Data or derive information from it for any advertising or other marketing purposes without Customer's express written consent.

**3.4 RIGHTS TO HARDWARE (if applicable).** Title to purchased Hardware (excluding all software thereon, and also excluding any leased or evaluation Hardware), and the risk of loss for such Hardware, passes to Customer upon shipment of the Hardware from BeyondTrust's (or, as applicable, Reseller's) facility. For Hardware provided to Customer under a lease transaction for a limited time period or for evaluation purposes ("Temporary Hardware"), BeyondTrust retains title to such Temporary Hardware. Customer: (a) shall not offer or purport to sell, assign, sub-let, lend, pledge, mortgage, or otherwise part with personal possession of Temporary Hardware, or allow any lien or other encumbrance to attach to such Temporary Hardware; (b) shall maintain Temporary Hardware in a suitable environment and in good condition, subject to reasonable wear and tear; (c) shall return all Temporary Hardware to BeyondTrust at Customer's expense or pay the then-current retail value for any such Temporary Hardware that is not returned upon expiration of the lease term or evaluation period or which is damaged; and (d) shall not conceal, alter, or make any addition or alteration to Temporary Hardware without BeyondTrust's prior express written consent.

**4. FEES AND PAYMENTS.** Customer shall: (a) pay the Fees and other charges and expenses set forth in each Order; (b) make all payments in full and without deduction or set-off within forty-five (45) days of the date of each invoice; and (c) pay such reasonable extra fees as BeyondTrust may charge for credit card payments. BeyondTrust may adjust the Fees for Software or Other Offerings at the end of the Initial Subscription Term (or, if applicable, any then-current Renewal Subscription Term) or the Support Term (or, if applicable, any then-current renewal period of the Support Term), as applicable, by providing written notice at least sixty (60) days before the beginning of any subsequent Renewal Subscription Term or, as applicable, any subsequent renewal period of the Support Term. For any Fees and other amounts remaining unpaid after the due date for such Fees and other amounts, Customer shall pay interest equal to the lesser of (i) 1.5% per month from the due date until the date such Fees and other amounts are paid in full, or (ii) the highest rate allowed under applicable law. All Fees and other amounts paid or payable to BeyondTrust are exclusive of federal, state, or local excise, sales, use, intangible, value added, or other taxes assessed or imposed with respect to the Software or Other Offerings. Customer is solely responsible for the payment of all taxes resulting from this Agreement, purchases under all Orders, or the use of any Software or Other Offering, including without limitation VAT, sales use, gross receipts tax, withholding taxes, and any similar tax, except for taxes based on BeyondTrust's income. BeyondTrust has no obligation to provide any Software or Other Offerings, or other products or services, while any payment amount due and owing from Customer is delinquent. Unless otherwise specified in the Order, all payments shall be made in U.S. Dollars, and Customer shall be responsible for all of Customer's bank fees in transmitting payment. If Customer is tax exempt from paying sales, use, or other taxes, Customer must provide BeyondTrust with appropriate evidence of tax exemption for all relevant jurisdictions prior to invoicing.

### 5. **TERM: TERMINATION.**

**5.1 TERM.** This Agreement is effective on the Effective Date and continues until terminated as provided herein (the "Term"). No Subscription Term or term for Hardware, Support Services, Professional Services or E-Learning Services, or other right to any BeyondTrust product or service will continue after any termination of this Agreement. In addition, any perpetual license for On-Premise Software shall also terminate upon any termination of this Agreement. The term for an On-Premise Software perpetual license shall begin on the date that, as applicable, BeyondTrust either (i) delivers such On-Premise Software to Customer, or (ii) makes such On-Premise Software available for download by Customer and shall continue until any termination of such license or this Agreement as provided herein. The initial term for any



Subscriptions granted herein commences on the effective date of the applicable Order and continues for the term specified in each such Order, or for one (1) year from the effective date of the applicable Order if the Order is silent with regard to the term (“Initial Subscription Term”). For purposes of clarity, the Initial Subscription Term may be for multiple years if specified in the applicable Order. Upon expiration of the Initial Subscription Term, the term of each Order will automatically renew thereafter for successive periods of one (1) year each, or for such other period as is stated on the applicable Order, (each, a “Renewal Subscription Term”), unless either Party notifies the other Party in writing of its intention to terminate an applicable Order at least thirty (30) days prior to the end of the Initial Subscription Term or, as applicable, the then-current Renewal Subscription Term. The Initial Subscription Term and all Renewal Subscription Term(s), if any, are collectively referred to as the (“Subscription Term”).

**5.2 TERMINATION FOR BREACH.** Either Party may terminate this Agreement thirty (30) days after notice to the other Party if the other Party has breached any material provision of this Agreement and fails to cure such breach within such thirty (30) day period. Notwithstanding the foregoing, BeyondTrust may terminate this Agreement immediately upon written notice if Customer materially breaches the provisions of the access and use restrictions set forth in this Agreement. Except for termination rights in this section and in Section 8 below, the Parties have no other right of early termination.

**5.3 EFFECTS OF TERMINATION.** Upon termination of this Agreement or of a Subscription Term or license for any reason, Customer shall immediately cease all use of all Software which is subject to such termination and any related Documentation and, within five (5) days of the effective date of such termination, return to BeyondTrust all such Software and Documentation, as well as any Temporary Hardware provided for use with such Software and any related BeyondTrust Confidential Information, or if BeyondTrust so requests, destroy the same and certify the manner, date, and time of destruction in writing. In the event of any such termination, Customer remains responsible for the payment of any Fees and other amounts incurred as of the effective date of such termination, including (except in the event of a termination for breach of this Agreement by BeyondTrust) payment of any applicable discounts provided for then-current Initial Subscription Term or Renewal Subscription Term, as applicable. The following provisions of this Agreement will survive any termination of this Agreement: (a) Sections 1, 3, 4, 5.3, 6, 7, 9, 10, 11, 12 and Exhibit A; and (b) and all other provisions which by their nature would extend beyond the Term of this Agreement.

## **6. DISCLAIMER AND LIMITATION OF LIABILITY.**

**6.1 DISCLAIMER.** BEYONDTRUST HEREBY EXPRESSLY AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AS WELL AS ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, BEYONDTRUST DOES NOT WARRANT OR REPRESENT THAT: (a) THE OPERATION OF THE SOFTWARE OR OTHER OFFERINGS WILL BE UNINTERRUPTED OR ERROR-FREE; (b) THAT THE SOFTWARE OR OTHER OFFERINGS WILL OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR SERVICE; OR (c) THAT THE SOFTWARE OR OTHER OFFERINGS ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION. SOFTWARE AND OTHER OFFERINGS ARE PROVIDED “AS IS,” AND BEYONDTRUST MAKES NO PROMISES, REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESSED OR IMPLIED, REGARDING THE SOFTWARE OR OTHER OFFERINGS. CUSTOMER HEREBY ACKNOWLEDGES THAT THE RECORDING FEATURES OF CERTAIN SOFTWARE MAY SUBJECT CUSTOMER TO LAWS AND/OR REGULATIONS REGARDING THE RECORDING OF COMMUNICATIONS, AND CUSTOMER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH SUCH LAWS AND/OR REGULATIONS.

### **6.2 LIMITATION OF DAMAGES.**

(a) **Excluded Damages.** NEITHER PARTY WILL HAVE LIABILITY TO THE OTHER PARTY FOR ANY LOSS OF DATA, LOSS OF PROFITS, OR INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR OTHER OFFERINGS.

(b) **Dollar Cap.** NEITHER PARTY’S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR OTHER OFFERINGS WILL EXCEED THE FEES PAID BY CUSTOMER FOR THE APPLICABLE SOFTWARE OR OTHER OFFERING GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM.

(c) **Clarifications.** THE LIABILITIES LIMITED BY THIS SECTION 6.2 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF A PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF A PARTY’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NEITHER PARTY WILL BE LIABLE FOR CLAIMS MADE MORE THAN TWO (2) YEARS AFTER THE EVENT GIVING RISE TO THE CLAIM. Notwithstanding the foregoing, the limitations of this Section 6.2 do not apply to infringement of intellectual property rights or to a Party’s obligations or liabilities set forth in Section 1 (Access and Use), Section 4 (Fees and Payments), Section 7 (Indemnification), and Section 9 (Confidential Information), or to claims for attorney’s fees and other litigation costs either Party becomes entitled to recover as a prevailing party in any action. If applicable law limits the application of the provisions of this Section 6.2, a Party’s liability will be limited to the maximum extent permissible under such applicable law. For the avoidance of doubt, a Party’s liability limits, and other rights set forth in this Section 6.2 apply likewise to a Party’s Personnel and Affiliates, and to BeyondTrust’s licensors, suppliers, advertisers, sponsors, and other representatives, as well as to Resellers.



7. **INDEMNIFICATION.** As used below in this Section 7: (1) “Indemnified Claim” refers to any claim listed in the first sentence of Section 7.1, or to claims listed in Section 7.2; and (2) “Associates” refers to a Party’s officers, directors, shareholders, parents, subsidiaries, agents Affiliates, successors, and assigns.

7.1 **INDEMNITY FROM BEYONDTTRUST.** BeyondTrust shall defend at its own expense any third party action against Customer or its Associates to the extent based on a claim that the Software or Other Offerings, as made available to Customer by BeyondTrust and used in accordance with the terms and conditions of this Agreement, directly infringes a United States registered patent, copyright or trademark, and BeyondTrust shall pay the costs and damages finally awarded against Customer that are specifically attributable to such claim or those costs and damages agreed to by BeyondTrust in a monetary settlement of such action. Notwithstanding the foregoing, BeyondTrust has no responsibility pursuant to the preceding sentence for any Indemnified Claim arising out of or related to: (a) any modification to a Software or Other Offering not made by BeyondTrust; (b) compliance with Customer’s designs, specifications, or instructions; (c) any combination or use of the applicable Software or Other Offering with or in any third party software, hardware, process, firmware, or data, to the extent that such claim is based on such combination or use; (d) Customer failure to use the Software or Other Offerings in accordance with the applicable Documentation and/or outside the scope of the rights granted under this Agreement; (e) Customer’s continued use of the allegedly infringing Software or Other Offering after being notified of the alleged infringement claim or after being provided a modified version of the Software or Other Offering by BeyondTrust at no additional cost that is intended to address such alleged infringement; (f) or Customer’s breach of this Agreement.

7.2 **INDEMNITY FROM CUSTOMER.** Intentionally omitted.

7.3 **PROCEDURE.** The Party requesting indemnification hereunder (“Indemnified Party”) shall: (a) provide the other Party (“Indemnitor”) with prompt notice of the Indemnified Claim, provided that failure to do so relieves Indemnitor of its obligations to the Indemnified Party above only to the extent of any material prejudice; (b) permit Indemnitor to control the defense and/or settlement of the Indemnified Claim; and (c) provide to Indemnitor all available information and assistance reasonably necessary for the defense. Indemnified Party shall have the right, at its sole cost and expense, to participate in the defense and settlement of an Indemnified Claim with counsel of its choice.

8. **IP REMEDIES.** If any Software becomes or, in BeyondTrust’s opinion, is likely to become the subject of an injunction preventing its use as contemplated herein, BeyondTrust may, at its option: (a) procure for Customer the right to continue using such Software; (b) replace or modify such Software so that it becomes non-infringing without substantially compromising its functionality; or if (a) and (b) are not commercially practical in BeyondTrust’s reasonable opinion, (c) terminate Customer’s rights to the allegedly infringing Software. In case of termination pursuant to this Section 8, BeyondTrust shall refund: (i) in the case of an On-Premise Software perpetual license, the license Fees paid by Customer for the allegedly infringing On-Premise Software, less depreciation at the rate of 1/3 of such license Fees per year, or, if licensed at the time by Customer for less than one (1) year, a pro rata portion of the license Fees for that part of the year from the date of payment by Customer to the date of termination of the perpetual license for such allegedly infringing On-Premise Software; or (ii) the prepaid and unused pro-rata portion of the Fees for the Subscription for the allegedly infringing On-Premise Software or Cloud Services. If BeyondTrust selects the option in Subsection 8(b) or 8(c) herein, Customer shall immediately cease use of the allegedly infringing Software. SECTION 7 AND THIS SECTION 8 SET FORTH BEYONDTTRUST’S ENTIRE OBLIGATION AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR ALLEGED OR ACTUAL INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION BY SOFTWARE OR OTHER OFFERINGS.

## 9. **CONFIDENTIAL INFORMATION.**

9.1 **CONFIDENTIAL INFORMATION.** “Confidential Information” refers to the following items one Party to this Agreement (“Discloser”) discloses to the other Party (“Recipient”): (a) any document Discloser marks “Confidential” or designates as “Confidential” in writing; or (b) any information Discloser orally designates as “Confidential” at the time of disclosure. In addition, BeyondTrust’s Confidential Information, as Discloser, includes the Software, any specifications regarding any Software or Other Offering, any pricing information regarding any Software or Other Offering, proprietary algorithms, SOC 2 reports and any information related to BeyondTrust research and development. However, Confidential Information does not include any information received from the Discloser that Recipient can demonstrate: (i) is in Recipient’s possession at the time of disclosure without an obligation of confidentiality; (ii) is independently developed by Recipient without use of or reference to the Discloser’s Confidential Information; (iii) becomes known publicly, before or after disclosure to the Recipient by Discloser, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser.

9.2 **NONDISCLOSURE.** Recipient shall not, without Discloser’s prior written consent (in each instance): (a) publish, disclose, or otherwise divulge Discloser’s Confidential Information; or (b) use Discloser’s Confidential Information for any purpose other than to support provision and use of Software or Other Offerings as authorized by, and in accordance with, the terms and conditions of this Agreement. Recipient shall use at least the same level of care to protect Discloser’s Confidential Information as it uses to protect its own sensitive non-public information, but in no event less than a commercially reasonable degree of care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Discloser’s Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Discloser’s Confidential Information as required by applicable law or by proper legal or governmental authority; further, Discloser understands and acknowledges that as a Public Body recipient is subject to particular disclosure laws, including Federal and State Freedom of Information Acts (“FOIA”), which require disclosure by Recipient of all non-exempt material as defined by FOIA. Recipient shall give Discloser reasonable notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense, unless such notice or action is prohibited by applicable law or proper legal or governmental authority. Recipient agrees that breach of this Section 9 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy at law or in equity, Discloser will be entitled to injunctive

relief against such breach or threatened breach, without proving actual damage or posting a bond or other security. This Agreement does not transfer ownership of Discloser's Confidential Information or grant a license thereto to Recipient or any other party. For clarity, this Section 9 relates only to the disclosure by one Party to the other Party of Confidential Information as defined herein and not to data that Customer or its Clients transmit or access through Software or Other Offerings provided by BeyondTrust.

## **10. USAGE COMPLIANCE.**

**10.1 *USAGE VERIFICATION.*** Customer acknowledges and agrees that BeyondTrust may verify Customer's compliance with this Agreement through online verification procedures, including without limitation by gathering product utilization information. On no more than an annual basis, Customer shall provide BeyondTrust with a report detailing Customer's installation and usage of the Software with sufficient specificity to establish Customer's compliance (or non-compliance) with the access and use limitations set forth in the applicable Order or this Agreement.

**10.2 *COMPENSATION.*** If Customer has exceeded the rights granted under this Agreement, Customer shall pay additional fees to BeyondTrust for the excess usage at BeyondTrust's then-current rates. Customer acknowledges and agrees that BeyondTrust may sell Subscription rights to Software or Other Offerings in unit multiples, and Customer shall pay the applicable Fees for the number of units that cover at least Customer's usage.

## **11. SECURITY AND DATA PROCESSING.**

**11.1 *SECURITY.*** BeyondTrust shall: (i) have in place administrative, physical and technical measures designed to ensure the protection of the security and confidentiality of Customer Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; and (ii) have commercially reasonable measures in place designed to protect the security and confidentiality of Customer Data, as more specifically set forth at [www.beyondtrust.com/security-requirements](http://www.beyondtrust.com/security-requirements).

**11.2 *DATA PROCESSING ADDENDUM.*** The DPA, which is hereby made a part of and incorporated into this Agreement by this reference, sets forth the terms and conditions which BeyondTrust may receive and process "Personal Data" (as defined in the DPA) received by BeyondTrust from Customer. To the extent applicable, the DPA shall apply with respect to BeyondTrust's processing of such Personal Data received by BeyondTrust as more specifically set forth in Exhibit B attached.

## **12. GENERAL PROVISIONS.**

**12.1 *INDEPENDENT PARTIES.*** The Parties acknowledge that each Party is an independent contractor of the other Party, and each Party may engage in other business activities at its sole discretion. This Agreement does not in any way create or constitute a relationship of employment, partnership, or a joint venture between the Parties. Customer hereby acknowledges and agrees that: (a) Resellers and BeyondTrust are independent contractors; (b) BeyondTrust has no liability for any act or omission of any Reseller; and (c) Resellers have no power to modify this Agreement or to bind BeyondTrust in any manner whatsoever, including without limitation any power to make any representation, warranty, or indemnity on BeyondTrust's behalf.

**12.2 *ASSIGNMENT.*** Neither Party may assign or transfer any of its rights under this Agreement or delegate any of its duties or obligations under this Agreement to any third party, other than to its Affiliates, without the other Party's prior written consent, except that an assigning Party may so assign, transfer or delegate without the other Party's consent pursuant to a transfer of all or substantially all of the assigning Party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment or transfer in violation of the foregoing will be void. In the case of any permitted assignment or transfer of under this Agreement, this Agreement or the relevant provisions hereof shall be binding upon, and inure to the benefit of, the Parties and their respective successors, executors, heirs, representatives, administrators and permitted assigns. In the event BeyondTrust permits Customer to assign this Agreement or a license granted hereunder, then the transferee must accept in writing the terms and conditions of this Agreement, and Customer's license to use the Software shall automatically terminate immediately upon such transfer.

**12.3 *FORCE MAJEURE.*** Each Party will be excused from performance of any of its obligations under this Agreement for any period during which, and to the extent that, it is prevented from performing such obligation as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, due to acts or omissions of government or military authority, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, internet or other telecommunication delays, communication line failure and power failures. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to forgive Customer's failure, or Customer's obligation, to pay any and all Fees and other amounts when due which are owed to BeyondTrust under this Agreement.

**12.4 *NOTICES.*** All notices given pursuant to this Agreement shall be in writing and delivered by hand, by registered or certified mail with proper postage, by third party delivery service (e.g., FedEx, UPS) or by email (with confirmation copy sent by certified mail). Notices shall be delivered to the recipient Party and addressed to the signatory for such Party at the address for such Party that is set forth on the applicable Order, or to such other person and address as may be designated in writing by the recipient Party in accordance with this Section 12.4. All such notices will be deemed received upon the earlier of actual receipt or actual delivery to the notice address.

**12.5 GOVERNING LAW; VENUE.** This Agreement, and all claims arising out of or related to this Agreement, will be governed solely by the internal laws of the State of Michigan, and applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the Parties' rights or duties; (b) the United Nations Convention on Contracts for the International Sale of Goods; (c) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); (d) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980; or (e) other international laws. The Parties' consent to the personal and exclusive jurisdiction of the federal and state courts of Oakland County and the State of Michigan and agree that such courts are convenient forums. This Section 12.5 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

**12.6 LICENSE TO GOVERNMENT.** The Software and any Documentation and e-learning systems are *commercial items*, as that term is defined in 48 CFR 2.101, consisting of *commercial computer software* and *commercial computer software documentation*, as those terms are used in 48 CFR 12.212. If the Software or any Documentation is acquired by or on behalf of the U.S. government or by a U.S. government contractor (including without limitation prime contractors and subcontractors at any tier), then in accordance with 48 CFR 227.7202-4 (for Department of Defense licenses only) and 48 CFR 12.212 (for licenses with all federal government agencies), the government's rights to the Software and such Documentation are limited to the commercial rights specifically granted in this Agreement, as restricted by this Agreement. The rights limited by the preceding sentence include, without limitation, any rights to reproduce, modify, perform, display, disclose, release, or otherwise use the Software or Documentation. This Section 12.6 does not grant Customer any rights not specifically set forth in this Agreement.

**12.7 COMPLIANCE WITH LAWS.** Each party shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information. Without limiting the generality of the foregoing, Customer acknowledges the Software is subject to U.S. export jurisdiction, and each party shall comply fully with all export and import laws, regulations, orders, and policies of the U.S. and any other applicable jurisdiction, including, without limitation, export licensing requirements, end user, end-use and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities Customer acknowledges and agrees that, with respect to applicable import and export restrictions, BeyondTrust has no further responsibility after the initial distribution to Customer within the original country of sale. Each party represents and warrants that neither the U.S. Bureau of Industry and Security nor any other federal agency has suspended, revoked, or denied a party's export privileges. Customer agrees it shall not use or transfer Software or Other Offerings for end use relating to any nuclear, chemical, or biological weapons, or development of missile technology unless authorized by the U.S. Government by regulation or specific license. Customer further agrees it may not use, sell, lease, export, re-export, or transfer (in-country), either directly or indirectly, Software or Other Offerings to a prohibited destination and/or country under the U.S. Export Administration Regulations ("EAR") or U.S. sanctions regulations, which currently includes Cuba, Iran, North Korea, Syria, and the Donetsk People's Republic, Luhansk People's Republic, and Crimea regions of Ukraine. Please note that this list ("Embargoed Destinations") is subject to change by U.S. Government authorities, and Customer should independently verify which destinations are prohibited. In addition to the Embargoed Destinations, Customer may not use, sell, lease, export, re-export, or transfer (in-country), either directly or indirectly, Software or Other Offerings to a person or entity barred by the U.S. Government from participating in export activities. Denied persons/entities include, but are not limited to, persons and/or entities such as those listed on the U.S. Commerce Department's Denied Persons List, Entity List, and the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") Specially Designated Nationals List. Finally, Customer represents and warrants that Customer is not the subject or target of economic sanctions of the United States or other applicable jurisdictions, and that Customer is not located in a country or territory subject to a U.S. Government embargo (including the "Embargoed Destinations") or that are located in the Republic of China or Russian Federation (collectively, an "Ineligible Customer"). BeyondTrust shall have the right to reject any Order from an Ineligible Customer.

**12.8 INTEGRATION AND AMENDMENT.** This Agreement and written documents referenced herein (including the Order) constitute the entire agreement of the Parties and supersede and extinguish all prior agreements or understandings, representations or warranties, whether written or oral, relating to the subject matter hereof. The terms and conditions of this Agreement supersede those of any prior contract between the Parties related to the Software or Other Offerings, as of the Effective Date of this Agreement and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the Parties, except that prior and still active orders between the Parties related to the Software are incorporated into this Agreement and are considered Orders by this reference. This Agreement may not be modified, amended, nor may additional obligations be assumed, by either Party to this Agreement except (a) by written agreement specifically referring to this Agreement signed by the respective authorized representatives of the Parties or (b) by Customer's execution of a subsequent electronic agreement provided by BeyondTrust with respect to the same Software or Other Offerings. Customer represents and acknowledges that, in entering into this Agreement, it did not rely on any representations or warranties other than those explicitly set forth in this Agreement. CUSTOMER HEREBY AGREES THAT ANY CONFLICTING, INCONSISTENT, VARYING OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER WRITTEN NOTIFICATION OR DOCUMENT ISSUED BY CUSTOMER IN RELATION TO THE SOFTWARE OR OTHER OFFERINGS WILL BE INAPPLICABLE AND OF NO FORCE OR EFFECT.

**12.9 PUBLIC RELATIONS.** BeyondTrust may: (a) use Customer's company name, logo, trademark, trade name, service mark, or other commercial designation to indicate the existence of a customer relationship between Customer and BeyondTrust; and (b) place Customer's name or logo in audio and online presentations to potential customers and business partners. BeyondTrust's use of any Customer trademark will be subject to such reasonable guidelines as Customer may provide directed at avoiding misrepresentation of Customer's brand or identity.

**12.10 CONSTRUCTION.** This Agreement will be construed simply according to its fair meaning and not strictly for or against any Party by reason of authorship or for any other reason. References to "including" mean "including, without limitation." If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement shall remain in full force and effect, provided that in such event the Parties agree to negotiate in good faith enforceable substitute provisions for such invalid or unenforceable provisions that most nearly effect the Parties' original intent, and which are valid and enforceable under applicable law. No waiver of any breach or default hereunder will be considered valid unless in writing and signed by the Party giving such waiver, and no such

waiver will waive any subsequent breach or default. Nothing expressed or implied in this Agreement will be construed to give any rights or remedies to any third party, including without limitation any third-party beneficiary rights, except as applicable the Parties' respective executors, heirs, representatives, administrators, successors, and assigns.

**12.11 REPRESENTATIONS.** Customer represents and acknowledges that: (a) it has read and understands this Agreement; and (b) it has had an opportunity to have its legal counsel review this Agreement. In addition, the individual accepting this Agreement on Customer's behalf personally represents that he or she is duly authorized to accept this Agreement on behalf of Customer and that this Agreement is binding upon Customer.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to sign this Agreement upon the date first set forth above.

**BEYONDTRUST CORPORATION**

**OAKLAND COUNTY, MICHIGAN**

By: <u>Loretta Gaid</u> <small>Loretta Gaid (Nov 9, 2023 16:22 EST)</small>	(Signature)	By: <u>Scott Guzy</u> <small>Scott Guzy (Nov 9, 2023 16:11 EST)</small>	(Signature)
Name: <u>Loretta Gaid</u>	(Print)	Name: <u>Scott Guzy</u>	(Print)
Title: <u>VP, Legal</u>		Title: <u>Purchasing Administrator</u>	
Date: <u>Nov 9, 2023</u>		Date: <u>Nov 9, 2023</u>	

## EXHIBIT A

### DEFINED TERMS

In addition to any other terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Active Login” means use of the BeyondTrust Remote Support Software as described in the applicable Order, by a single service representative, logged in directly or indirectly to the Remote Support server software, at any given time. The number of Active Logins is the number of service representatives accessing the Remote Support server software concurrently.

“Active Endpoints” means the number of Endpoints accessed by the BeyondTrust Privileged Remote Access Software, as described in the applicable Order. “Endpoint” means any network device or computer system, virtual or physical, such as, but in no event limited to, a router, server, storage array, database, or desktop, and/or any unique application made accessible via the Secure App feature included with the Software; and/or any unique URL made accessible through BeyondTrust Web jump feature published as an endpoint within the Software

“Affiliate(s)” means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity or one or more of the other affiliates of that entity (or a combination thereof), as of the Effective Date or thereafter; provided, however, such entity shall be considered an Affiliate only for the time during which such control exists. Solely for the purposes of this definition, an entity shall “control” another entity if the first entity: (a) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity, or (b) has the ability to elect a majority of the directors of the other entity. Each Party shall at all times be primarily responsible for the acts or omissions of its Affiliates.

“Asset” means a device, physical or virtual, that meets one of the descriptions for Active Login, Active Endpoints, Managed User and/or Computer Object, Managed Devices and Managed Servers.

“Client” means a direct customer of Customer.

“Cloud Services” means provision of access to and use of the Software, and in some cases the Documentation, remotely over the Internet. Cloud Services do not include or provide On-Premise Software.

“Cloud Service Level” located at <https://www.beyondtrust.com/cloud-service-level> as applicable, which will apply only to BeyondTrust’s provision of the Cloud Services and not to the provision of On-Premise Software.

“Customer Data” means all graphic user interface, text, content, images, video, designs, products, computer programs, drawings, documentation, and other materials of any kind posted, submitted, provided or otherwise made available to BeyondTrust by Customer in connection with the Software and Other Offerings.

“DPA” means the provisions detailed in the BeyondTrust Data Processing Addendum located at: [www.beyondtrust.com/dpa](http://www.beyondtrust.com/dpa)

“Documentation” means the documents, help files, and other textual matter, in any form or media, that are included with the Software and describe its specifications, functionality, and limitations.

“Effective Date” means the earlier of the following: (i) execution of this Agreement by both Parties, (ii) the effective date of the first Order, or (iii) the date the Software is first made available to Customer.

“Fee(s)” means the fee(s) charged by BeyondTrust (as set forth on the applicable Order) for each Software or Other Offering.

“Hardware” means the computer equipment distributed by BeyondTrust, or by a Reseller on BeyondTrust’s behalf, pursuant to an Order. Hardware may contain firmware or software.

“Instance” means a single deployed application (e.g., production, test, or disaster recovery)

“Managed User and/or Managed Computer Object” is any physical, virtual, Container or computing device, wired or wireless and regardless of the number of IP addresses assigned, that will be either interacting with software rules, have an agent installed, or be targeted for an assessment. A “Virtual Machine” is a virtual emulation of a physical computer. Virtual Machines exist in virtual environments including but not limited to VMWare Server, Hyper-V, Azure VM’s, Amazon AWS VM’s, or zOS LPAR’s. “Container(s)” is an emulation that occurs at the OS level. This is a contrast to Virtual Machines, which emulate at the hardware level up.

“Managed Devices” means any network device being managed by a Software or Other Offering that is virtual or physical, such as a desktop PC, router, or switch that is not a server OS or functioning as a server of Customer and/or Clients.

“Managed Servers” means any network device being managed by a Software or Other Offering that is (a) acting as a server or running a server-based operating system, virtual or physical, (b) used for serving applications, websites, DNS, Directory Service, DHCP, files, storage arrays, databases or (c) filling any other server-related roles on behalf of Customer and/or Clients.

“On-Premise Software” means electronically delivered Software provided for installation on computers owned or managed by Customer. On-Premise Software does not include Cloud Services, or any Software provided through Cloud Services.

“Order” means an ordering document executed by Customer and BeyondTrust, or a Reseller, on BeyondTrust’s standard order form, referencing this Agreement and calling for provision of one or more Software or Other Offerings; provided a Customer purchase order for the second or later purchase under this Agreement will become an Order upon execution by BeyondTrust or a Reseller.

“Personnel” means individual employees, contractors, and agents of an entity.

“Reseller” means a reseller of the Software authorized by BeyondTrust. As between the Parties, BeyondTrust has sole and complete discretion to grant or terminate Reseller status.

“Software” means the applicable object code form of the BeyondTrust software as listed on the applicable Order.

“Software or Other Offering(s)” means: (a) Software and Documentation, in each case whether provided as or with On-Premise Software or via Cloud Services; (b) Hardware; (c) deliverables provided through Professional Services; and (d) the Professional Services, Support Services, and E-Learning Services.

“Subscription” means the purchase by Customer under an Order of either an On-Premise Software limited term license or Cloud Services.

“Support Services” means the then-current services provided by BeyondTrust as set forth in the “Support Guide” located at <https://www.beyondtrust.com/resources/datasheets/customer-support-guide>

“Support Term” means the time period specified in the applicable Order during which Support Services shall be provided by BeyondTrust to Customer in connection with an On-Premise Software perpetual license, which time period for Support Services is subject to renewal or termination in accordance with the Standard Terms & Conditions.

“Upgrade” means any modification, correction, enhancement, deletion, or substitution to the Software, including but not limited to, any data file or module thereto that may be provided by BeyondTrust.

**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: [insert website address]

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, 0.0  
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 0.156, 222



Prosper Orange  
PMS 715 | CMYK 0.54, 87.0 | RGB 246, 141, 48



### 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.



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.

**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/PAYMENT OBLIGATIONS FOR A PRIVILEGED ACCESS MANAGEMENT (PAM) SYSTEM**

**1. INTRODUCTION**

**1.1.** Contractor shall provide County with a Privilege Access Management package. The Privilege Access Management System ("System") will provide a Tier 2 – Password Safe Cloud + PRA Cloud package.

**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 Data and Computer systems.
- 1.2.3.** Provide the County with training.
- 1.2.4.** Implement the System within 180 days of the Contract being executed.

**2. SYSTEM FEATURES**

**2.1.** The System provided by the Contractor shall provide:

- 2.1.1.** Password Safe configuration.
- 2.1.2.** Resource Zones/Broker deployment.
- 2.1.3.** Functional Accounts onboarding.
- 2.1.4.** Password Rotation testing.
- 2.1.5.** Session Proxy testing.
- 2.1.6.** MFA configuration.
- 2.1.7.** SIEM Connector configuration.
- 2.1.8.** SAML configuration.
- 2.1.9.** Cloud deployment
- 2.1.10.** User Authentication configuration.
- 2.1.11.** Two-Factor Auth configuration.
- 2.1.12.** Integration Client setup.
- 2.1.13.** Vault Credential Injection configuration.
- 2.1.14.** Teams/Vendors configuration.
- 2.1.15.** Client Deployment completion.
- 2.1.16.** Password Safe Vault integration.
- 2.1.17.** Ongoing Project Documentation.

### **3. SYSTEM IMPLEMENTATION**

#### **3.1. Contractor shall use the steps described below to implement the System.**

##### **3.1.1. Initial Planning**

###### **3.1.1. Project Kickoff and Scope Review**

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

**3.1.1.1.2.** A Kickoff meeting shall be held with an agenda containing at a minimum, the following items for discussion:

**3.1.1.1.2.1.** Identify points of contact for technical and administrative activity. Including email, mobile telephone, as well as after-hours contact guidelines. The Contractor will use this information to create the Project Communications Plan.

**3.1.1.1.2.2.** Introduce individuals from the County and the Contractor who will be performing the work and reviewing their roles and responsibilities.

**3.1.1.1.2.3.** Review a draft implementation Project Plan provided by the Contractor.

**3.1.1.1.2.4.** Review this Scope of Deliverables Exhibit.

**3.1.1.1.2.5.** Discuss a tentative timeline for the project.

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

##### **3.1.2. Information Gathering**

**3.1.2.** Contractor will communicate with the 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:

**3.1.2.1.1.** The integrations required with other systems operated by County, including which data must be integrated into the System.

**3.1.2.1.2.** The technical support that will be available during System set-up through post-implementation.

##### **3.1.3. Deliverables**

###### **3.1.3. The System provided by Contractor shall:**

**3.1.3.1.1.** Deploy the PS Cloud Tenant

**3.1.3.1.2.** Configure up to two (2) Resource Zones and up to four (4) Resource Brokers

**3.1.3.1.3.** Complete Asset Import from Active Directory (AD) or Address Group (AG)

via Discovery Scan – (up to 2,500 assets)

- 3.1.3.1.4.** Implement Automated Password, SSH Management per Account, RDP & SSH Session Management per OS, and Retrieve Password for database account management (up to 5 per OS)
- 3.1.3.1.5.** Set up Remote Application Session Management per Application (Up to 2)
- 3.1.3.1.6.** Define Access Policy and Password Complexity Policy per OS (up to 3)
- 3.1.3.1.7.** Complete AD integration for User Security Group, Computer and Account discovery, and LDAP integration per Domain (up to 2)
- 3.1.3.1.8.** Configure Smart Groups for Asset, Managed System and Managed Account (up to 10)
- 3.1.3.1.9.** Assign User Group with PS Roles to Smart Groups (up to 10)
- 3.1.3.1.10.** Include MFA: RADIUS integration for Password Safe (1 provider)
- 3.1.3.1.11.** Configure Syslog/SIEM connector from available built-in connectors (up to 1)
- 3.1.3.1.12.** Include Single sign-on integration (SAML 2.0) or integration with external ticketing solution (up to 1)
- 3.1.3.1.13.** Install and configure Password Cache and example API PowerShell Script to pull from Cache (if required)
- 3.1.3.1.14.** Include Password Safe Use Case Configuration
  - 3.1.3.1.14.1.** Use Case 1: Rotate password and proxy RDP Session – Local Windows Administrator to Windows Server
  - 3.1.3.1.14.2.** Use Case 2: Rotate password and proxy SSH session – Local root/privileged account to Linux/Unix server.
  - 3.1.3.1.14.3.** Use Case 3: Rotate password and proxy SSH session – Local Administrator to Network device.
  - 3.1.3.1.14.4.** Use Case 4: Rotate password and proxy RDP session – Active Directory Windows Administrator to Windows Server
  - 3.1.3.1.14.5.** Use Case 5: Rotate password and proxy SSH session – Active Directory Administrator to Linux/Unix server (requires established Active Directory Bridge)
  - 3.1.3.1.14.6.** Use Case 6: Rotate password and proxy SSH session – Active



Directory Administrator to Network device (requires established Active Directory Bridge)

3.1.3.1.14.7. Use Case 7: Rotate and RDP – Dedicated Active Directory Administrator to Windows Server – ensure only the individual can see his administrator account – requires naming convention to match with suffix or prefix.

3.1.3.1.14.8. Use Case 8: Rotate and Retrieve Password – Local Database Administrator

3.1.3.1.14.9. Use Case 9: Rotate and Retrieve Password – Local Database Administrator with Password and/or SSH Key to Linux/Unix Server

3.1.3.1.14.10. Use Case 10: Rotate and Retrieve Password – Local Database Administrator and/or SSH Key to Network device.

3.1.3.1.14.11. Use Case 11: Rotate password on Windows Services or Scheduled Tasks – Windows Administrator on Windows Server with Service using account as “log on as”

**3.1.3.1.15.** Include Privileged Remote Access Cloud – Tier 2

3.1.3.1.15.1. Perform Cloud deployment

3.1.3.1.15.2. Configure User Authentication using Local or LDAP, Active Directory or SAML

3.1.3.1.15.3. Configure Two-factor Authentication via Kerberos, RADIUS or Smart Card

3.1.3.1.15.4. Configure Integration Client Setup: Session/Recording archival and Automated Configuration Backup

3.1.3.1.15.5. Configure Vault Credential Injection (5 Endpoints and 5 Credentials)

3.1.3.1.15.6. Configure up to ten (10) Teams/Vendors

3.1.3.1.15.7. Configure up to five (5) Console manually

3.1.3.1.15.8. Manually deploy up to five (5) Endpoints per team/vendor

3.1.3.1.15.9. Complete mass deployment options for endpoints and consoles.

**3.1.3.1.16.** Complete Password Safe Vault Integration

**3.1.3.** Integrate with the following County Systems

**3.1.3.2.1.** OKTA and Active Directory

**3.1.4. Single Sign-On.**



**3.1.4.** 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)

**3.1.4.1.1.** After the County receives each of the above Deliverables, the County shall have five (5) business days to review the Deliverable and notify Contractor if it is acceptable. If the Deliverables requires modifications, the County shall provide the Contractor with a written list of the sections in the Deliverables that need to be modified. Upon receipt of the revised Deliverables, the County shall have five (5) business days to review the Deliverables and notify the Contractor if the Deliverables area acceptable. This process will continue until the County provides written notice that each individual Deliverable is acceptable.

**3.1.5. Configuration Planning**

**3.1.5.** The Contractor and the County shall work together to confirm:

**3.1.5.1.1.** The prerequisite BeyondTrust checklist is in place.

**3.1.5.1.2.** The method that will be used by the County to report support issues to the Contractor.

**3.1.6. Installation and Configuration**

**3.1.6.** The Contractor shall:

**3.1.6.1.1.** Test the installed System.

**3.1.6.1.2.** Provide final documentation.

**3.1.7. Implementation**

**3.1.7.** The Contractor shall:

**3.1.7.1.1.** Implement the Deliverable from Section 3.1.1.3.

**3.1.7.1.2.** Provide the County with reference guides that explain all of the features and functions of the System.

**3.1.8. Training**

**3.1.8.1.1.** Contractor shall Provide Knowledge Transfer during BeyondTrust Implementation

**3.1.8.1.1.1.** The following training courses are available during the first year and can be renewed as needed on an annual basis.

**3.1.8.1.1.1.1.** Password Safe User Elearning Course.

**3.1.8.1.1.1.2.** Password Safe Admin Elearning Course

**3.1.8.1.1.1.3.** Privileged Remote Access Console Elearning

**3.1.8.1.1.1.3.1.** Privileged Remote Access WBT Training For Administrators – Subscription

**3.1.9. User Acceptance Testing**

**3.1.9. Contractor shall:**

**3.1.9.1.1.** Meet with the County to review the status of the System Implementation and review the User Acceptance Test Plans.

**3.1.9.1.2.** User Acceptance Test will align with the (10) ten use cases listed in section 3.1.3.1.14

**3.1.9.1.3.** The final User Test and Acceptance Plans will be based on configuration and requirements from the use cases listed in section 3.1.3.1.14.

**3.1.10. Deployment**

**3.1.10. Contractor shall:**

**3.1.10.1.1.** Provide Password Safe + Privileged Remote Access Cloud Only Remote Implementation Tier 2.

**3.1.10.1.2.** Providing a Technical Account Manager for dedicated support to the County.

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

**4. PRICING**

**4.1. One-time Implementation Costs**

Cost Description	One-time Cost
Password Safe User Elearning Course	\$347.00
Password Safe Admin Elearning Course	\$1,683.00
Privileged Remote Access Console Elearning	\$347.00
Password Safe + Privileged Remote Access Cloud Only Remote Implementation Tier 2 – Fixed Cost	\$33,600.00
Privileged Remote Access Wbt Training for Administrators - Subscription	\$1,683.00
Enterprise Technical Account Management (TAM)	\$49,500.00
Advanced Web Access – Privileged Remote Access	\$0.00
<b>Total Implementation Costs</b>	<b>\$87,220.00</b>

**4.2. Ongoing Annual Costs**

Cost Description	Annual Cost
Password Safe W/ Privileged Remote Access Per Asset Cloud (x1000) – Year 1	\$120,000.00
Password Safe W/ Privileged Remote Access Per Asset Cloud (x1000) – Year 2	\$120,000.00
Password Safe W/ Privileged Remote Access Per Asset Cloud (x1000) – Year 3	\$120,000.00
<b>Total 3-year Annual Cost</b>	<b>\$360,000.00</b>

## 5. PAYMENT

### 5.1. COUNTY SHALL PROVIDE PAYMENT TO CONTRACTOR FOR IMPLEMENTATION COSTS AS FOLLOWS:

5.1.1. THREE-FOURTHS (3/4) OF THE TOTAL IMPLEMENTATION COSTS UPON EXECUTION OF THE CONTRACT

5.1.1. WHICH IS \$65,415.00.

5.1.2. ONE-FOURTH (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.

5.1.2. WHICH IS \$21,805.00.

5.1.3. COUNTY SHALL PROVIDE PAYMENT TO CONTRACTOR WITHIN FORTY-FIVE (45) DAYS (NET45) AFTER RECEIPT OF INVOICE FOR IMPLEMENTATION COSTS THAT IS NOT DISPUTED BY COUNTY.

### 5.2. COUNTY SHALL PROVIDE PAYMENT TO CONTRACTOR FOR ANNUAL SUPPORT COSTS FOR:

5.2.1. FIRST YEAR WITHIN FORTY-FIVE (45) DAYS (NET45) AFTER RECEIPT OF INVOICE THAT IS NOT DISPUTED BY COUNTY AFTER CONTRACT EXECUTION.

## 6. ANY ADDITIONAL YEARS WITHIN FORTY-FIVE (45) DAYS (NET45) AFTER RECEIPT OF INVOICE THAT IS NOT DISPUTED BY COUNTY. ROLES AND RESPONSIBILITIES

### 6.1. CONTRACTOR RESPONSIBILITIES – CONTRACTOR SHALL:

6.1.1. Be responsible for providing the services and deliverables outlined in this document.

6.1.2. 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 cameras are configured.
- 6.2.5. Review the following Password Safe Use Case Preparation:

### Use Case Preparation

The use cases provided in this document use Smart Groups to accomplish the following:

- Discover assets and accounts using a Discovery Scan.
- Add assets and accounts into Password Safe management.
- Assign permissions and roles to user groups.

## REQUIRED SERVICE ACCOUNTS

Password Safe uses the following three types of service accounts that you must create in BeyondInsight prior to implementing the use cases in this guide:

**Credentials for Discovery Scans:** Detailed and advanced Discovery Scans require a credential that has privileges to discover the details for services, tasks, systems, devices, users, and databases from Active Directory or LDAP. To implement the use cases in this guide, you must create a credential that has sufficient privileges to retrieve this information from your directory. You can create credentials from the BeyondInsight Console, by navigating to **Configuration > Discovery and Vulnerability Management > Credentials**.

- **Functional Accounts:** Smart Groups for adding assets into Password Safe management require a functional account that can access the assets with the privileges required to manage and change passwords on the accounts associated with those assets. To implement the use cases in this guide, you must create a functional account for each of the following:

- Windows servers
- Linux servers
- Network devices

**Directory Credentials:** Smart Groups for discovering Windows servers and directory accounts use a directory query for the Discovery Scan to pull details from Active Directory or LDAP and populate the Smart Group. A directory query requires a directory credential that has privileges to access the directory and request this information. To implement the use cases in this guide, you must create a directory credential for each of the following:

- Windows servers
- Windows directory accounts
- Linux directory accounts

## PREPARATION FOR SMART GROUPS

A Smart Group provides a way of grouping systems and accounts using filter conditions and actions called *Smart Rules*.

The following items must be configured in BeyondInsight prior to creating the smart groups for each use case:

- **Directory Query:** Smart Groups for discovering Windows servers and directory accounts use a directory query for the Discovery Scan to pull details from Active Directory or LDAP and populate the Smart Group. You must create a directory query for each of the following:
  - Windows servers
  - Windows directory accounts
  - Linux directory accounts
- **Address Group:** Smart Groups for discovering Linux servers and network devices use address groups for the Discovery Scan to discover and pull details for these assets from Active Directory or LDAP and populate the Smart Group. You need to create an address group for each of the following:
  - Linux servers
  - Network devices
- **Access Policy:** An access policy to allow approved RDP and SSH sessions must be configured so it can be assigned to user groups when assigning roles and permissions for each of the use cases.

## **7. SERVICE LEVEL COMMITMENT & SUPPORT DELIVERABLES**

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

- 7.1.1.** Dedicated Technical Account Manager (Year 1)
- 7.1.2.** support in English during BeyondTrust's normal business hours
  - 7.1.2.1.** Severity 1 - 24 hours a day, 365 days a year
  - 7.1.2.2.** Severity 2 and 3 - Sunday, 7pm US Central Time – Friday, 7pm US Central Time
- 7.1.3.** Severity Level 1 After Hours Support
  - 7.1.3.1.** BeyondTrust provides 24/7 access to a Self-Diagnostic Tool for troubleshooting Severity Level 1 Incidents and, for customers with an active Support contract, a Self-Service Center and Knowledge Base available at BeyondTrust's Support Portal (BeyondTrust.com/myportal)). BeyondTrust additionally offers 24/7 support for Severity Level 1 incidents for BeyondTrust Subscription Service customers. Severity Level 1 incidents reported by email should be followed up by phone call to a published Support Contact number. Calls received outside of normal business hours will be triaged for appropriate Severity Level and escalated to an On-Call Support Engineer based on the determined Severity Level. Once an On-Call Support Engineer is engaged the focus of the engagement is to downgrade the severity of the Incident to Severity Level 2 either through a full resolution or by providing an agreed upon workaround.

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

- 7.2.1.** Have a representative available to communicate with the Contractor when the Contractor is working to resolve a service-related incident or request.

## **8. SERVICE MANAGEMENT**

### **8.1. Service Availability**

- 8.1.1.** Refer to Section 7 – Service Level Commitments

### **8.2. Service Requests**

- 8.2.1.** Case submission information required when submitting a case to BeyondTrust technical support, please have the following information available:
  - Company name
  - Contact name, phone number, and email address
  - Desired severity level
  - Unique case number if this is a continuation of an existing case
  - BeyondTrust product name and version number
  - Detailed problem statement, including how long the problem has been occurring, any steps to reproduce the problem, and screenshots illustrating the problem

- Description of any troubleshooting done so far if any
- Relevant logs or support package
- Versions and roles of any operating systems associated with or used by the BeyondTrust product