



DeWight Dopslauf, C.P.M., CPPO
Harris County Purchasing Agent

February 08, 2024

Commissioners Court
Harris County, Texas

RE: Sole Source Exemption - Local Government Code § 262.204 (a)(7)

Members of Commissioners Court:

Please approve a sole source exemption from the competitive bid requirements and the attached Order authorizing the County Judge to execute the Addendum to the attached Agreement for the following:

Description: Subscription Licenses and Support for iBi WebFOCUS Software Products for Harris County

Vendor(s): Cloud Software Group, Inc.

Term: through August 30, 2024 with four (4) one-year renewal options

Amount: \$117,836

Reviewed By: • Harris County Purchasing • Universal Services - Technology

Sole Source Agreement to provide certain software license and support services. A purchase order will be issued upon Commissioners Court approval.

Sincerely,

DeWight Dopslauf
Purchasing Agent

TRJ
Attachment(s)
cc: Vendor(s)

FOR INCLUSION ON COMMISSIONERS COURT AGENDA FEBRUARY 27, 2024



**ADDENDUM TO THE AGREEMENT BETWEEN
HARRIS COUNTY AND CLOUD SOFTWARE GROUP, INC.**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Addendum to the above-referenced Agreement is made and entered into by and between Harris County (“County”), a body corporate and politic under the laws of the State of Texas, acting by and through Harris County Universal Services (“Department”), and Cloud Software Group, Inc. (“Contractor”). County and Contractor are referred to herein collectively as the “Parties” and individually as a “Party.”

Recitals

The Department desires subscription licenses and support for iBi WebFOCUS Software Products (the “Products”).

This Agreement is a sole source procurement pursuant to Tex. Loc. Gov’t Code Ann. § 262.024(a)(7)(A). Due to the proprietary nature of the products, Contractor is the sole provider and source for the Products.

Contractor represents and warrants it is willing and capable of providing the Products.

Terms

I.

Contractor’s “End User Agreement” and “Order Form” are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by reference (collectively referred to as the “Agreement”). In the event of any conflict between this Addendum and the Agreement and the Addendum, this Addendum shall control.

II.

TERM

The Term of the Agreement shall be for a period beginning upon execution by the Parties and running until August 30, 2024, unless terminated sooner under section 8 of the End User Agreement. This Agreement may be renewed on the same terms and conditions for four (4) additional one (1) year periods (each a “Renewal Term”). Notwithstanding the foregoing, the term of the Order Form, and any renewals related thereto if any, shall be as agreed to by the Parties in

the Order Form.

III.

LIMIT OF APPROPRIATION

- A) It is expressly understood and agreed that the County has available One Hundred Seventeen Thousand Eight Hundred Thirty-Six and No/Dollars (\$117,836.00), the total maximum sum of funds certified available by the County Auditor of Harris County through the issuance of a Purchase Order by the Harris County Purchasing Agent, for the purpose of satisfying the County's obligations during the initial Order Term, under the terms and provisions of the Agreement. County understands and agrees, said understanding and agreement being also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to under the current Order Form and the total maximum sum that the County shall become liable to pay to Contractor under the current Order Form shall not under any conditions, circumstances, or interpretations thereof exceed the sum.
- B) The Parties agree that Contractor continued to provide Services and the County continued to accept Services under an expired contract. As full compensation for the Services as detailed in the Order Form and performed from August 31, 2023 until August 30, 2024 the Parties agree the total amount stipulated in Section III(A) above is due. Such payment(s) represent the full amount owed by the County for the Services as detailed in the Order Form and performed under an expired contract and Services through the remainder of the Term.
- C) When and if all the funds certified available are expended for the purpose of satisfying County's obligations under the terms and provisions of the Order Form, the sole and exclusive remedy of Contractor shall be to terminate the Agreement.
- D) With regard to any Renewal Terms or extension of the Agreement, the County has not certified any funds for any renewal or extension period beyond the current fiscal year. Therefore, if County exercises any renewal option, the renewal is subject to the future allocation and certification of funds for each Renewal Term.

IV.

PAYMENT TERMS

- A) Contractor shall submit to Harris County, Attn: Auditing, 1001 Preston 8th Floor, Houston, Texas 77002, an invoice for Products purchased. Each invoice shall include such detail of the Products as may be requested by the County Auditor for

verification purposes.

- B) After receipt of an invoice, County Auditor shall forward the invoice to Department for review and approval with such modifications, to the County Auditor for payment. The County shall pay each invoice as approved by the County Auditor in accordance with the laws of the State of Texas. All invoices shall be paid within thirty (30) days upon receipt.
- C) Any language in the Agreement referencing any monies to be paid in excess of the Limit of Appropriation and beyond the fees detailed in Exhibit B is hereby deleted.

V.

TAXES

- A) County is a governmental entity under TEX. TAX CODE ANN. § 151.309, as amended and claims exemption from sales and use taxes. County agrees to provide exemption certificates to Contractor upon request.
- B) County is neither liable for any personal property taxes, charges, or fees assessed against Contractor nor obligated to reimburse Contractor for any taxes, charges, or fees assessed against Contractor for the goods or supplies provided or any Products purchased under the Agreement. Any language in the Agreement in conflict with this section is hereby deleted.

VI.

COMPLIANCE AND STANDARDS

- A) Contractor represents that it is registered with the Texas Secretary of State to transact business in Texas, and is current on all state and local fees and taxes, including but not limited to Franchise Account Status of “in good standing” with the Texas Comptroller of Public Accounts.
- B) Contractor represents that it, nor any other affiliated entities, to the best of its knowledge and belief, owe any debts to Harris County, including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office. For the purposes of this Agreement, a court judgment is not required for delinquent taxes to be considered a debt.
- C) NO FEDERAL EXCLUSION
 - i) Contractor represents, to the best of its knowledge and belief, that Contractor

is not an “Ineligible Person.” An “Ineligible Person” is an individual or entity who:

- a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in any federal and/or state grant, health care program, or in federal and/or state procurement or nonprocurement programs. This includes but is not limited to persons who are on the List of Excluded Individuals or Entities of the Inspector General, List of Parties excluded from Federal Programs by the General Services Administration or the Medicaid Sanction List; or,
 - b) has been convicted of a criminal offense related to the provision of health care items or services [within the rules and regulations of 42 USC §1320a-7(a)], but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.
- ii) Contractor agrees to report immediately to the County if Contractor becomes an “Ineligible Person” during the term of this Agreement, or to cease assigning any employee to provide Services if the employee becomes an “Ineligible Person” during the term of this Agreement.
 - iii) Contractor represents, to the best of its knowledge and belief, that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal programs, including but not limited to the following: Department of Health and Human Services (DHHS), Office of Inspector General (OIG) - List of Excluded Individuals & Entities (LEIE); U.S. General Services Administration (GSA) – Excluded Parties List System (EPLS); All States (50) Health & Human Services Commission Medicaid OIG Sanction List; Government Terrorist Watch List (OFAC / Patriot Act); Department of Commerce, Bureau of Industry and Security, Denied Persons List; and Department of Homeland Security, Immigration and Customs Enforcement (ICE) Most Wanted. Contractor must immediately notify the County of any such exclusion or suspension. Contractor warrants and represents that it is in good standing with all State and Federal agencies that have a contracting or regulatory relationship with the County. Contractor warrants and represents that no person who has an ownership or controlling interest in Contractor’s business or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any federal program.
- D) Whistleblower Protection Act: Contractor understands and agrees that this Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. Contractor shall inform its employees in writing, in the predominant

language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. Contractor shall insert the substance of this clause; paragraph M (“Whistleblower Protection Act”), in all subcontracts providing services under this Agreement.

- E) Prior to execution of the Agreement, Contractor shall, as an update, complete Form 1295 in accordance with Tex. Gov’t Code Ann. § 2252.908 concerning “Interested Parties,” Contractor warrants and represents that all the information on the form is complete and accurate.
- F) Foreign Terrorists Organizations. In accordance with Tex. Gov’t Code Ann. Chapter 2252 Subchapter F, Contractor warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this Agreement and any Renewal Terms, Contractor does not appear on the Texas State Comptroller’s list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
- G) Anti-Boycott. Contractor warrants and represents, in accordance with Tex. Gov’t Code Ann. § 2271.002, that unless Contractor meets an exemption under subsection (a), then, as required by subsection (b), Contractor’s signature on this Agreement constitutes Contractor’s written verification that it does not boycott Israel and will not boycott Israel during the term of the contract.
- H) Fraud, Waste or Abuse Hotline. Contractor shall immediately report to the County through the County’s Fraud, Waste, or Abuse Hotline and also notify the County in accordance with all the Notice provisions contained in this Agreement all suspected or known instances and facts concerning fraud, waste, abuse, or criminal activity under this Agreement. The County’s Fraud, Waste, or Abuse Hotline can be accessed by phone at 866-556-8181 or online at <https://secure.ethicspoint.com/domain/media/en/gui/68174/index.html>.
- I) In special circumstances, Contractor may be required to allow duly authorized representatives of Harris County or the state and federal government electronic access via a screen share to applicable materials necessary to verify the nature and extent of the cost of Services provided by Contractor. Contractor must provide such access to Harris County within five (5) business days of request by the County.

VII.

PUBLIC CONTACT

- A) Contact with the news media, citizens of Harris County or governmental agencies shall be the responsibility of the County.

- B) Under no circumstances shall the Contractor release any material or information developed in the performance of their Services hereunder without the express written permission of the County. The Contractor may be authorized to use photographic, artistic, and narrative depictions of the project in its promotional and professional materials only written authorization of the County.

VIII.

NOTICE

Any notice, report, invoice, or other document required or permitted to be given or made under the Agreement shall be in writing. Any such notice, report, invoice, or other document shall be delivered (i) by hand, (ii) by prepaid overnight or registered mail, or (iii) via email (if any email address is provided) and shall be deemed to have been received on the first business day following the date on which it was sent. Unless otherwise provided in the Agreement, all notices, reports, invoices, or other documents shall be delivered to the following addresses:

To Contractor:	Cloud Software Group, Inc. 851 West Cypress Creek Road Fort Lauderdale, FL 33309 Attn: Cody Freeborn
To the County:	Harris County Universal Services 406 Caroline Street Houston, Texas 77002 Attn: Karen Vasquez
With a copy to:	Harris County Purchasing Agent 1111 Fannin, 12 th Fl Houston, Texas 77002 Attn: Gabriel Moya

Either Party may change its address for receipt of notices, reports, invoices, and other documents by giving the other Party ten (10) days written notice.

IX.

APPLICABLE LAW AND VENUE

- A) The Agreement is subject to applicable state and federal laws, orders, rules, and regulations relating to the Agreement.
- B) The Agreement is governed by the laws of the State of Texas.

- C) The forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas.
- D) The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

X.

NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY

- A) Nothing in the Agreement is construed as creating or limiting any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create or limit any personal liability on the part of any officer, director, employee, or agent of County.
- B) The Parties agree that no provision of the Agreement extends County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C) Neither the execution of the Agreement nor any other conduct of either Party relating to the Agreement shall be considered a waiver by the County of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.
- D) County does not agree to binding arbitration, nor does County waive its right to a jury trial.

XI.

TEXAS PUBLIC INFORMATION ACT

- A) The Parties expressly acknowledge that the Agreement is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended (the "Act"). Contractor agrees that to the extent, if any, that any provision of the Agreement is in conflict with the Act, the same shall be of no force and effect. Contractor expressly understands and agrees that County shall release any and all information necessary to comply with Texas law with notice to Contractor.
- B) It is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the County, whether or not the same are available to the public. It is further understood that County, its officers and employees shall have

the right to rely on the advice, decisions, and opinions of the Attorney General.

- C) In the event County receives a written request for information pursuant to the Act that affects Contractor 's rights, title to, or interest in any information or data or a part thereof, furnished to County by Contractor under the Agreement, then County will promptly notify Contractor of such request. Contractor may, at its own option and expense, prepare comments and submit information directly to the Attorney General of Texas stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. Contractor is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. Contractor is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.
- D) Electronic Mail Addresses. County affirmatively consents to the disclosure of its e-mail addresses that are provided to County, including any agency or department of County. This consent is intended to comply with the requirements of the Act, and shall survive termination of the Agreement. This consent shall apply to e-mail addresses provided by Contractor and agents acting on behalf of Contractor and shall apply to any e-mail address provided in any form for any reason whether related to the Agreement or otherwise.


XII.

EXECUTION

Multiple Counterparts: This Addendum may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Addendum.

[SIGNATURE PAGE FOLLOWS]

CLOUD SOFTWARE GROUP, INC.

By 
Name: Rafael Carmona Toscano
Title: VP Legal
Date: Jan 23, 2024



HARRIS COUNTY

By: _____
LINA HIDALGO
COUNTY JUDGE

APPROVED AS TO FORM:
CHRISTIAN D. MENEFE
COUNTY ATTORNEY


DocuSigned by:

By: 8282675D1B4C4AE
Cherelle Sims
Assistant County Attorney
C.A. File 23GEN1698

EXHIBIT A

End User Agreement

THIS IS A LEGAL AGREEMENT BETWEEN CUSTOMER AND THE CLOUD SOFTWARE GROUP, INC. ENTITY REFERENCED IN THE ORDER THAT GOVERNS CUSTOMER'S ACCESS AND USE OF COMPANY PRODUCTS. BY ACCESSING AND/OR USING THE PRODUCTS, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. THIS AGREEMENT DOES NOT APPLY TO THIRD PARTY PRODUCTS SOLD SEPARATELY WHICH SHALL BE SUBJECT TO THE TERMS OF THE THIRD PARTY PROVIDER.

1. **Definitions**

- 1.1. "Affiliate" means with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party, where "control" means the power, directly or indirectly, to direct, or to cause the direction of, the management and policies of an entity, through majority ownership of voting securities or equity interests.
- 1.2. "Agreement" means the End User Agreement and any other documents incorporated by reference, including an Order.
- 1.3. "Authorized Reseller" means Company's authorized resellers and distributors.
- 1.4. "Authorized User" means Customer's employees, agents, contractors, consultants, or other third parties permitted under the applicable license model, and who have agreed in writing to be bound by terms at least as protective of Company as those in this Agreement. Authorized User specifically excludes a third party that deploys, operates, and manages the Software in an environment owned or controlled by such third party on Customer's behalf.
- 1.5. "Business Unit" means a Company operating unit supporting a specific Product.
- 1.6. "Cloud Services" means software-as-a-service offerings made available via a remote network, inclusive of any applicable on-premises components.
- 1.7. "Company" means Cloud Software Group, Inc., or its Affiliate, that delivers the Products pursuant to an Order.
- 1.8. "Confidential Information" means any information disclosed by either party, whether or not marked, including, without limitation, the provisions of the Agreement, the Products, Materials, individual contact information provided by either party, or related performance test results derived by Customer, but expressly excludes Customer Content and Personal Data.
- 1.9. "Consulting Services" means installation, configuration, training or other professional services performed by Company pursuant to or in connection with an Order.
- 1.10. "Contact" means a Customer contact person who interfaces with Company's Maintenance personnel.
- 1.11. "Customer" means the legal entity or individual that places one or more Orders for Products from Company or an Authorized Reseller.
- 1.12. "Customer Content" means (i) any data uploaded to a Cloud Service for storage or data in Customer's computing environment to which Company is provided access in order to perform Cloud Services or (ii) disclosed by Customer to Company for the purpose of receiving Maintenance and/or Consulting Services. Customer Content may be confidential in nature and is subject to the standard of care set forth in Section 7.
- 1.13. "Documentation" means material provided with a Product, as updated by Company from time to time, describing how to make use of that Product.

- 1.14. "Education Services" means training services performed or delivered by Company.
- 1.15. "Error" means a material failure of the Software, Cloud Services, or Hardware to conform to its functional specifications described in the Documentation that is reported by Customer to and replicable by Company.
- 1.16. "Extraordinary Corporate Event" means a corporate transaction which results in Customer divesting business operations and related assets to another or new entity, or acquiring, being acquired by, merged, or otherwise combined with another entity or into another entity's legal or corporate structure (including an acquisition of all or substantially all of the assets of another entity) which, prior to the corporate transaction, was not part of the Customer or its legal or corporate structure.
- 1.17. "Fees" means all fees and/or payments stated in an Order applicable to the Products.
- 1.18. "Hardware" means appliances or other physical devices offered as Products.
- 1.19. "Maintenance" means Company's provision of technical support services and Updates, which are provided pursuant to the Business Unit Terms associated with the Product purchased in an Order.
- 1.20. "Materials" means any tangible or intangible information, design, specification, instruction, projectware or data (and any modifications, adaptations, derivative works or enhancements) provided by Company during the performance of Consulting Services which incorporates, reinforces or is used to apply Company's configuration or implementation methodologies, processes and know-how to Customer's use of the Software, excluding Customer Content.
- 1.21. "Number of Units" means, for each Order, the license entitlement under the applicable license model for each Product, and for multiple Orders, collectively, the cumulative entitlement to each.
- 1.22. "Perpetual" means a license for Software, where Maintenance (if available) is in addition to the Software license Fees, and the right to use the Software is for an indefinite period of time, unless applicable law renders a perpetual license invalid, in which case, "Perpetual" means the right to use the Software for a period of ninety-nine (99) years from the Order Effective Date.
- 1.23. "Order" means a document or process memorializing Customer's purchase of Products (including an order form, Purchase Order, statement of work, Work Order, on-line order, or other form of an ordering document delivered or made available by Company) submitted by Customer to (i) Company, (ii) a Company authorized reseller, and/or (iii) through Company Product websites.
- 1.24. "Product" means Software, Cloud Services, Hardware, Maintenance, Consulting Services, and Education Services.
- 1.25. "Purchase Order" means any document issued by Customer requesting Products.
- 1.26. "Software" means a Company proprietary or licensed third party program and/or Open Source Software program in object code form which is licensed hereunder including Documentation and any subsequent Updates provided under Maintenance.
- 1.27. "Subscription" means the non-cancellable license to use the Software or Cloud Service stated in an Order and identified as Subscription, that includes the right to receive Maintenance during the Term.
- 1.28. "Term" means the duration for which the Customer is entitled to use the Products as stated in an Order, including renewal terms if any.
- 1.29. "Updates" means any corrections, bug fixes, features or functions added to or removed from the Software or Cloud Services if and when made generally available by Company under Maintenance.

2. **Product terms**

- 2.1. **Software.** Unless otherwise stated in the Agreement or in the Order, Company grants Customer a limited, non-transferable, non-sublicensable, non-exclusive, worldwide license to install, run, access, and use the Number of Units of Software during the Term (if applicable) solely for internal business purposes in accordance with the Business Unit Terms, an Order, and Documentation.
- 2.2. **Cloud Services.** Unless otherwise stated in the Agreement or in the Order, Company grants Customer a limited, non-transferable, non-sublicensable, non-exclusive, worldwide license to access and use the Number of Units of Cloud Services during the Term solely for internal business purposes in accordance with the Business Unit Terms, Order, and Documentation. Additional Cloud Service Terms are stated at <https://www.cloud.com/content/dam/cloud/documents/legal/cloud-services-usage-terms-and-conditions.pdf>, which are incorporated by reference.
- 2.3. **Hardware.** Hardware is provided for use of Software as licensed hereunder in accordance with the Business Unit Terms and Hardware Documentation.
- 2.4. **Consulting Services.** Consulting Services are provided pursuant to the Consulting Services Terms available at <https://www.cloud.com/content/dam/cloud/documents/legal/consulting-services-terms.pdf>.
- 2.5. **Maintenance.** Maintenance is provided pursuant to the Business Unit Terms (defined below).
- 2.6. **Education Services and Courseware.** Unless otherwise stated in the Agreement or in the Order, Company grants Customer a limited, non-transferable, non-sublicensable, non-exclusive, worldwide license to use the Number of Units of Education Services and/or Courseware as stated in an Order in accordance with the Business Unit Terms and Documentation solely for internal business purposes.
- 2.7. **Limitations on Use.** Except to the extent permitted by applicable law, Customer shall not (i) make more copies of the Software than required for use (except for a reasonable number of copies for archival purposes) or use any unlicensed versions of the Products; (ii) use any Products that are not listed in an Order even if such unlicensed software is made available to Customer as part of Company's general delivery mechanisms; (iii) allow anyone other than Authorized Users to install, run, access, or use the Products; (iv) sublicense, distribute or pledge the Software or any of the rights granted in the Agreement; (v) modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or attempt to decipher any code relating to Products; (vi) use or access any embedded or bundled component of Products on a stand-alone basis where such embedded or bundled component is provided to Customer for the sole purpose of enabling the functionality of such Product; (vii) use third party software except in conjunction with Products and subject to the same use rights that it has to the Products; (viii) use any third party software in conjunction with any Products, unless Customer ensures that such use does not cause the Product to become subject to any third party license applicable to such third party software or require the public disclosure or distribution of any Product or the licensing of any Product or Materials or the purpose of making derivative works; (ix) market, offer to sell, and/or resell Products; and (x) if the Customer is a Company competitor, use Products for competitive benchmarking or analysis, unless permitted under applicable law.
- 2.8. **Business Unit Terms.** Additional Product specific terms are defined and stated in the <https://www.cloud.com/content/dam/cloud/documents/legal/business-unit-terms.pdf> ("Business Unit Terms").
3. **Orders and Delivery**
 - 3.1. **Orders.** Customer shall order Products by issuing an Order to Company using the ordering and renewal process pursuant to the applicable Business Unit Terms. The ordering process may specify Orders be submitted to Authorized Resellers or directly to Company. All Orders, including renewals, are subject to acceptance by Company at its discretion.
 - 3.2. **Delivery.** Company shall deliver the Software, Cloud Services and Courseware electronically and delivery is deemed complete when the Product is made available to Customer. Company shall ship Hardware (or other tangible Product components, if any) Ex Works Company's shipping location (Incoterms 2020), and title shall pass to Customer upon delivery by Company to the shipping location.

4. **Financial Terms**

- 4.1. **Payment Terms.** Customer is responsible for all Fees and Taxes on Orders. In the event a purchase is direct with Company, Customer shall pay Company net thirty (30) days from the date of the invoice. All purchases are final, with no right to a refund or set-off, except as expressly provided in this Agreement. Company may charge Customer an additional 1.5% per month (or such lower amount as required by applicable law) for all Fees that are not paid on time. Company reserves the right to suspend or terminate delivery of any Product, or any portion thereof, for non-payment of Fees.
- 4.2. **Multiyear Subscriptions.** If Customer purchases a multi-year Subscription for any Product, or a multi-year renewal for any Product, the purchase is for the full value stated in the Order and is non-cancellable during the Term stated in the Order.
- 4.3. **Renewal Fees.** Company may increase any other recurring Fees upon written notice 60 days prior to the end of the then current Term stated in the Order.
- 4.4. **Taxes.** Fees stated in an Order are exclusive of all applicable transactional taxes on Products and Services (including but not limited to withholding tax, sales tax, services tax, value-added tax (VAT), goods and services tax (GST), and tariffs and/or duties) imposed by any government entity or collecting agency based on the Products (“Taxes”). Customer shall (i) pay Company such applicable Taxes (excluding Company’s income taxes) listed on the relevant invoice or (ii) withhold all applicable taxes according to the local rules, both of which may be in addition to Fees due.

5. **Intellectual Property**

- 5.1. **Company Proprietary Rights.** Subject to Section 5.3, Company and its Affiliates own, or have license rights to, all intellectual property rights in Software, Cloud Services, Materials, Documentation, and all derivatives thereof (collectively “Protected Materials”) and Company trademarks (“Company Marks”), which are protected by applicable patent, copyright, trademark and trade secret laws. Customer must duplicate unaltered copies of all proprietary notices incorporated in or affixed to any Protected Materials. Except as expressly stated in the Agreement, Customer receives no other rights to use any of Company’s Protected Materials or Company Marks. Except for the limited license use rights expressly granted in the Agreement, Customer has no right, title or interest in or to the Protected Materials, Products, or Company Marks or any intellectual property rights related thereto. In no event may Customer alter or delete any proprietary notices on Protected Materials.
- 5.2. **Customer Proprietary Rights.** Customer Content and Personal Data is and remains the property of Customer; except for a limited, non-exclusive, worldwide license to Company to provide any services or otherwise fulfill its obligations under this Agreement.
- 5.3. **Open Source Software.** Certain Products include Open Source Software that is governed by the open source license(s) indicated as applicable to the code at <https://www.citrix.com/buy/licensing/open-source.html> or as listed in Documentation. “Open Source Software” means third party software distributed by Company under an open source licensing model (e.g., MIT License, Apache License BSD license, the GNU General Public License, or a license either approved by, or similar to those approved by the Open Source Initiative).

6. **Confidentiality**

- 6.1. **Non-Disclosure.** Neither party shall disclose Confidential Information to any third party (other than an Affiliate or to an Authorized Reseller) without the disclosing party’s prior consent. Confidential Information may only be disclosed to recipients that need to know such information, and on the condition that the recipient is subject to a written agreement to protect information with terms as protective as this Agreement. Company may use data collected during the Term for any purpose in an aggregated, anonymized form, provided that such data is aggregated from more than one customer and does not identify Customer, Customer employees, or Customers’ customers. Confidential Information remains the sole property of the disclosing party; except for rights explicitly granted in the Agreement, the receiving party does not acquire any rights to such Confidential Information.

- 6.2. **Exclusions.** The duty to protect Confidential Information does not apply to information that is shown to be: (i) available to the public other than by a breach of a confidentiality obligation; (ii) rightfully received from a third party not in breach of a confidentiality obligation; (iii) independently developed by one party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); (v) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.
- 6.3. **Remedies.** Except as prohibited by local law, each party shall indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from a breach of this Section. Money damages may not be a sufficient remedy for a breach of confidentiality. If either party breaches the confidentiality obligations, the non-breaching party may seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief is in addition to all other rights and remedies available at law or in equity.

7. **Security and Privacy**

- 7.1. **Software Security.** Company develops and delivers Products, and provides Cloud Services, Maintenance, or Consulting Services, in accordance with the Services Security Exhibit at <https://www.cloud.com/trust-center/citrix-services-security-exhibit> ("Security Exhibit"), which is incorporated by reference into the Agreement.
- 7.2. **Data Security.** For Cloud Services, Maintenance, or Consulting Services that requires Company to process Personal Data, Company (as defined in the DPA) shall (i) implement and maintain the administrative, physical and technical security controls as set forth in the Security Exhibit, and (ii) process Personal Data on Customer's behalf as set forth in the Company Data Processing Addendum at <https://www.cloud.com/trust-center/cloud-software-group-data-processing-agreement> ("DPA"), which is incorporated by reference into the Agreement. Customer shall provide any notices, obtain any consents, or otherwise establish the legal basis necessary for Company to access and process Personal Data as specified in this Agreement.

8. **Term and Termination**

- 8.1. **Term.** This Agreement remains in effect until terminated. The Term for any Product starts on the Term start date stated in an Order and continues as indicated on the Order. FOLLOWING THE END OF THE INITIAL TERM, THE TERM WILL AUTOMATICALLY RENEW (SUBJECT TO ANY FEE INCREASES STATED IN SECTION 4) CONTINUOUSLY FOR THE SAME LENGTH AS THE INITIAL TERM UNLESS EITHER PARTY GIVES WRITTEN NOTICE PRIOR TO THE END OF THE INITIAL OR ANY RENEWAL TERM OF ITS INTENTION TO TERMINATE. Customer's failure to provide required notice of non-renewal constitutes an Order for the renewal. Either party may terminate an Order for Consulting Services, upon 15 days prior written notice by Customer or 30 days prior written notice by Company.
- 8.2. **Termination for Cause.** Either party may terminate this Agreement and/or any applicable Order if the other party breaches any of its material obligations in the Agreement and fails to cure such breach within thirty (30) days of receipt of written notice from the non-breaching party. Either party may immediately terminate the Agreement if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business. Company may immediately terminate the Agreement if the Customer materially breaches Sections 2, 5 or 13.
- 8.3. **Effect of Termination.** Upon termination of an Order, (i) Customer will immediately discontinue all access and use of the Products, and (ii) subject to Company's written request, Customer shall provide Company with a certification signed by a Customer representative with authority to bind Customer that Customer has de-installed and destroyed all Units of the Products deployed prior to termination. Neither party shall be liable for any damages resulting from termination of the Agreement or an Order, including without limitation unavailability of Customer Content arising therefrom; provided, however, termination shall not affect any claim arising prior to the effective termination date. Company shall have the right to invoice Customer and Customer shall pay for any use of the Cloud Service past the date of termination other than Customer's access to download Customer Content. Termination of this Agreement or

any Order does not (i) relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement or (ii) limit either party from pursuing other remedies available to it, including injunctive relief.

- 8.4. **Survival.** The provisions of Sections 1 (Definitions), 2.7 (Limitations on Use), 5 (Intellectual Property), 8.3 (Effect of Termination), 9 (Warranties and Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), 13 (Export Restriction and Compliance with Laws), 15 (Miscellaneous) survive any termination of the Agreement. The provisions of Section 6 (Confidentiality) survive any termination of the Agreement for three (3) years, except for trade secrets which shall remain confidential for so long as they remain trade secrets.
9. **Warranties and Disclaimer** To the extent permitted by law, the following warranties apply:
- 9.1. **Software Warranty.** Company warrants that for a period of ninety (90) days from initial delivery of Software, the Software, as updated and used in accordance with the Documentation, will operate in all material respects in conformity with the functional specifications in the Documentation.
- 9.2. **Cloud Services Warranty.** Company warrants that during the Term of a Cloud Service, the Cloud Service, when used in accordance with the Documentation, will operate in all material respects with the Documentation.
- 9.3. **Hardware Warranty.** Company warrants that for a period of one (1) year from delivery of Hardware, Hardware will be free from defects in material and workmanship in normal use, but does not cover any of the following: (i) improper installation, maintenance, adjustment, repair or modification by Customer or a third party; (ii) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (iii) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, water damage or other irregularities; (iv) third party software or software drivers; or (v) damage during shipment.
- 9.4. **Other Services Warranties.** Company warrants that Maintenance, Consulting Services, and Educational Services will be delivered in a professional manner, but does not warrant that every question or problem raised will be resolved, or resolved in a certain amount of time.
- 9.5. **Customer Content Warranties.** Customer warrants that (i) it has the right to transmit Customer Content as part of the Cloud Services or any other service that Company may provide in connection with delivering Products to Customer and (ii) its use of Cloud Services will not cause the transmission of spam, unsolicited messages, or infringing, offensive, threatening, or otherwise unlawful content that violates applicable law or the rights of third parties.
- 9.6. **Warranty Remedy.** If the Software or Cloud Services does not perform as warranted during the applicable warranty period, Company shall use commercially reasonable efforts to correct Errors. Customer shall promptly notify Company in writing of its claim within the applicable warranty period. Provided that such claim is determined by Company to be Company's responsibility, as Customer's exclusive remedy for any Software or Cloud Service warranty claim, Company shall, within 30 days of its receipt of Customer's written notice, (i) correct such Error; (ii) provide Customer with a plan reasonably acceptable to Customer for correcting the Error, or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Company, then Company may terminate the license for the affected Product and issue Customer a prorated refund of the Fees paid for the affected Product. The preceding warranty cure constitutes Company's entire liability and Customer's exclusive remedy for Company's breach of the warranties stated in this Section 9. Customer's exclusive remedy under for the Company breach of the Maintenance, Consulting Services, and Educational Services warranty is re-performance of the services. If the Hardware does not perform as warranted during the applicable warranty period, Company's entire liability and Customer's exclusive remedy (which is subject to Customer returning the Hardware to Company or its Authorized Reseller and confirming that such return is finalized) will be, at the sole option of Company and subject to applicable law, to replace the Hardware or to refund the purchase price paid for the Hardware, and to terminate any Software licenses associated with the Hardware.
- 9.7. **WARRANTY DISCLAIMER.** TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTIES, COMPANY AND ITS SUPPLIERS MAKE AND CUSTOMER RECEIVES NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE;

AND COMPANY AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. PRODUCTS, ARE NOT INTENDED FOR ANY USE WHERE FAILURE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ITS SELECTION TO ACHIEVE ITS INTENDED RESULTS, AND FOR ITS USE, AND RESULTS OBTAINED THEREFROM.

- 9.8. Company shall not be responsible for any claimed breach of warranty arising out of i) modifications to Products made by Customer or any party other than Company, (ii) Customer's failure to use any Updates or other corrected versions of Products made available by Company, (iii) Errors caused by customizations, (iv) any use of Products by Customer that is outside the operating procedures stated in the Documentation, (v) adherence to Customer's instructions by Company during the delivery of Consulting Services.

10. **Indemnification**

- 10.1. **IP Indemnification.** Company shall defend Customer against any third party Infringement Claim. Further, Company will indemnify Customer from and against damages, costs, and fees reasonably incurred (including reasonable attorneys' fees) that are attributable exclusively to such claim or action and which are assessed against Customer in a final judgment or settlement. Company's obligation to defend, settle, or indemnify Customer are subject to: (i) Customer promptly notifies Company in writing of an Infringement Claim such that Company is not prejudiced by any delay of such notification; (ii) Company has sole control over the defense and any settlement of any Infringement Claim; and (iii) Customer provides reasonable assistance in the defense of same. For the purposes of these terms, "Infringement Claim" means any claim, suit or proceeding brought against Customer based on an allegation that the Product(s), excluding any Open Source Software, as delivered by Company, infringes any patent or copyright or violates any trade secret rights of any third party.

- 10.2. **Remedies.** If Customer's use of any of the Products is, or in Company's opinion is likely to be, enjoined as a result of an Infringement Claim, Company shall, at its sole option and expense, either (i) procure for Customer the right to continue to use the Products as contemplated in an Order, or (ii) replace or modify the Services to make their use non-infringing without degradation in performance or a material reduction in functionality. If options (i) and (ii) are not reasonably available, Company may, in its sole discretion and upon written notice to Customer, cancel access to the Products and refund to Customer any prepaid, but unused, Fees on the Products.

- 10.3. **Exclusions.** Company assumes no liability, and shall have no liability, for any Infringement Claim based on (i) Customer's access to and/or use of the Products following notice of an Infringement Claim; (ii) any modification of the Products by Customer or at its direction; (iii) Customer's combination of the Products with third party programs, services, data, hardware, or other materials; or (iv) any trademark or copyright infringement involving any marking or branding not applied by Company or involving any marking or branding applied at Customer's request. THE FOREGOING STATES COMPANY'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM HEREUNDER.

11. **Limitation of Liability** EXCEPT FOR (a) A BREACH BY CUSTOMER OF SECTION 2, (b) INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE SECRETS, (c) DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, AND (d) TO THE EXTENT PERMITTED BY APPLICABLE LAW (THE "EXCLUDED MATTERS"), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSSES, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA; (ii) LOSS OF INCOME; (iii) LOSS OF OPPORTUNITY; (iv) LOST PROFITS; and (v) UNAVAILABILITY (EXCLUDING CREDITS DUE FOR ANY SERVICE LEVEL AGREEMENT OBLIGATION) OR NON-PERFORMANCE OF ANY OR ALL OF THE SERVICES, IN EACH CASE, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE EXCLUDED MATTERS, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY ARISING OUT OF THIS AGREEMENT AND/OR THE TERMINATION THEREOF, SHALL BE LIMITED TO THE SUM OF THE AMOUNTS PAYABLE FOR THE APPLICABLE PRODUCT(S) DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY, OR IN THE CASE OF MAINTENANCE, CONSULTING SERVICES OR EDUCATION SERVICES, THE AMOUNTS PAID FOR THE APPLICABLE SERVICE. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S OBLIGATIONS TO PAY ANY FEES AND/OR OTHER SUMS DUE UNDER ANY ORDER.

12. **U.S. Government End-Users** If Customer is a U.S. Government agency, Customer hereby acknowledges and agrees that the Products constitute "Commercial Computer Software" as defined in Section 2.101 of the Federal Acquisition Regulation ("FAR"), 48 CFR 2.101. Therefore, in accordance with Section 12.212 of the FAR (48 CFR 12.212), and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement ("DFARS") (48 CFR 227.7202-1 and 227.7202-3), the use, duplication, and disclosure of the software and related Documentation by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this Agreement. If, for any reason, FAR 12.212 or DFARS 227.7202-1 or 227.7202-3 or these license terms are deemed not applicable, Customer hereby acknowledges that the Government's right to use, duplicate, or disclose the software and related Documentation are "Restricted Rights" as defined in 48 CFR Section 52.227-14(a) (May 2014) or DFARS 252.227-7014(a)(15) (Feb 2014), as applicable. Manufacturer is Cloud Software Group, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida 33309.
13. **Export Restriction and Compliance with Laws** Customer acknowledges that the Products are subject to U.S., foreign, and international export controls and economic sanctions laws and regulations and agrees to comply with all such applicable laws and regulations, including, but not limited to, the U.S. Export Administration Regulations ("EAR") and regulations promulgated by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Customer specifically shall not, directly or indirectly, export, re-export, transfer, import, sell, lease, supply, or allow access to or use of the Products in or for embargoed or sanctioned countries/regions, by sanctioned or restricted persons, or for prohibited end-uses under U.S. law without authorization from the U.S. government.
14. **Trial and Development Usage**
 - 14.1. **Trial Usage.** If a Product offering is provided for trial, demonstration, or evaluation use ("Trial") under an Order, Customer may use the Product for the Term stated in an Order for internal demonstration, test, or evaluation purposes only. Company PROVIDES TRIALS "AS IS" AND WITHOUT WARRANTY, MAINTENANCE OR INDEMNITIES. ANY CUSTOMER DATA PROVIDED BY CUSTOMER TO COMPANY IN CONNECTION WITH A TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME PRODUCT AS THOSE COVERED BY THE TRIAL OR EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. These terms supersede any conflicting terms and conditions in this Agreement. Trial versions may be suspended or terminated at any time by Company in its sole discretion with or without notice to Customer. Notwithstanding anything to the contrary in this Agreement, Products subject to Trial license may be deployed by Customer on AWS, Microsoft Azure, or similar environments.
 - 14.2. **Developer Evaluation.** Products provided for Developer evaluation, or described as "Alpha," "Beta," "Tech Preview," or "Labs" by the Business Unit under an Order, may be used for development evaluation purposes only, must not be used or deployed in or on a Production or non-evaluation development environment, and are provided "AS IS" without Maintenance or any warranties or indemnities. Such offerings may contain bugs, errors, and other defects. Company does not make any representations, promises, or guarantees that such offerings will be publicly announced or made generally available. Such offerings can be suspended or terminated at any time by Company in its sole discretion with or without notice to Customer. Notwithstanding anything to the contrary in this Agreement, such offerings may be deployed by Customer on AWS, Microsoft Azure, or similar environments.
15. **Miscellaneous**

- 15.1. **Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without Company's prior written consent. Any attempted assignment in violation of the foregoing shall be void. This Agreement will bind and inure to the benefit of each party's successors or permitted assigns.
- 15.2. **Extraordinary Corporate Event.** If Customer or its successors or assigns enters into an Extraordinary Corporate Event after an Order Effective Date, those users, divisions, or entities that were added to or divested from Customer's organization as a result of the Extraordinary Corporate Event are not authorized to use the Products until those users, divisions, or entities are added to this Agreement by way of a written amendment signed by duly authorized officers of the Company and Customer, or in the case of a divestiture, the divested entity.
- 15.3. **Audit.** During the term of any Order and for a period of one year following termination of an Order, Company and/or its independent auditors, at Company's expense, may, upon 10 days' notice and at reasonable times, audit Customer's compliance with this Agreement, and report any results to Company and its licensors. Customer shall, at no cost to Company, (i) provide any assistance reasonably requested by Company or its designee in conducting any such audit, including installing and operating audit software and (ii) make requested systems, personnel, records, and information available to Company or its designee to facilitate the timely completion of such audit. Customer's failure to comply with the provisions of this section will constitute a material breach of this Agreement. Customer shall promptly cure any noncompliance, and if the audit reveals Customer's noncompliance exceeds 5% of its entitlement, Customer shall reimburse Company for the reasonable costs and expenses of the audit (including but not limited to reasonable attorneys' fees); provided, however, that the obligations under this section do not constitute a waiver of Company's termination rights and do not affect Company's right to payment for Products related to usage in excess of the Number of Units.
- 15.4. **Notices.** All notices required under this Agreement must be in writing and delivered to the address last designated on the account for Customer, and the Company contracting entity as specified in the Agreement or Order. Notice is deemed given (i) upon personal delivery; (ii) if delivered by air courier or email, upon confirmation of receipt; or (iii) five (5) days after deposit in the mail. A copy of all legal notices from Customer to Company must also be sent to contract-notice@cloud.com, or other email addresses provided by Company. Company may provide Customer with non-legal notices through www.mycitrix.com and/or through in-product messaging or dashboards, which shall likewise be deemed effective immediately.
- 15.5. **Entire Agreement; Order of Precedence.** The Agreement sets forth the entire agreement and understanding of the parties relating to its subject matter and supersedes all prior and contemporaneous oral and written agreements. Any conflict between these terms and any supplementary terms is subject to the following order of precedence: (1) an Order, (2) the Business Unit Terms, and (3) this End User Agreement. Nothing contained in any Customer Purchase Order or other document submitted by Customer shall in any way add to or otherwise modify the Agreement or any Company license program terms under which an Order is submitted. The Business Unit Terms, Service Descriptions, Maintenance terms, Security Exhibit, or DPA may be updated by Company from time to time without notice (but will be identified by the last updated date). Customer's continued access to and use of the Products constitutes acceptance of the then-current terms.
- 15.6. **Headings.** Captions and headings are used in the Agreement are for convenience only, are not a part of this Agreement, and are not to be used in interpreting or construing this Agreement.
- 15.7. **Validity.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.
- 15.8. **Relationship of the Parties.** The parties are independent contractors and nothing in this Agreement creates a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between or among the parties. Company may subcontract responsibilities under this Agreement, but remains responsible for its breach of this Agreement by the acts or omissions of Company or its subcontractors. Company's Affiliates may fulfill obligations under an Order and such activity is not considered to be a subcontracted responsibility.

- 15.9. **Resellers.** Company Authorized Resellers and distributors do not have the right to make modifications to this Agreement or to make any additional representations, commitments, or warranties binding on Company.
- 15.10. **Waiver.** No waiver or amendment of any term or condition of this Agreement shall be valid or binding on any party unless agreed to in writing by such party. Company failure to enforce any term of this Agreement will not be construed as a waiver of the right to enforce any such terms in the future. Unless otherwise specified, remedies are cumulative.
- 15.11. **Force Majeure.** Neither party will be responsible or have any liability for any delay or failure to perform its non-monetary obligations hereunder to the extent due to unforeseen circumstances or causes beyond its reasonable control, including acts of God, earthquake, fire, flood, sanctions, embargoes, strikes, lockouts or other labor disturbances, civil unrest, pandemics, failure, unavailability or delay of suppliers or licensors, riots, terrorist or other malicious or criminal acts, war, failure or interruption of the internet or third party internet connections or infrastructure, power failures, acts of civil and military authorities and severe weather ("Force Majeure"). The affected party will give the other party prompt written notice (when possible) of the failure to perform due to Force Majeure and use its reasonable efforts to limit the resulting delay in its performance.
- 15.12. **Governing Law and Venue.** If Customer is entering into the Agreement from a European Union member country, Norway, Switzerland, Japan, India or Australia, then the Agreement is governed by the laws of Ireland and subject to the exclusive jurisdiction of the courts of Ireland. Otherwise, the Agreement is governed by the laws of the State of Florida and Customer agrees that it must institute any suit, action, or proceeding arising out of this Agreement in the state or federal courts located in Broward County, Florida. Customer hereby waives any objection that it may have to Company instituting any suit, action, or proceeding arising out of this Agreement in the state or federal courts located in Broward County, Florida, and Customer hereby irrevocably consents to the personal jurisdiction of any such court in any such suit, action, or proceeding. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.
- 15.13. **Third Party Beneficiary.** Except as expressly stated, the Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party.
16. **Country Specific Terms**
- 16.1. **Australia.** If the Company contracting entity is incorporated in Australia, the following terms apply:
- 16.1.1. To the maximum extent permitted under the Australian Consumer Law (ACL), the liability for breach of any guarantee under the ACL (other than a guarantee under section 51, 52 or 53) is limited to, at Company's option:
- 16.1.1.1. in the case of goods, to: (i) the replacement of the goods or supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and
- 16.1.1.2. in the case of services, to: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again (ACL Liability Limit). Where Customer acquires Services as a "consumer" (as defined under the ACL) and the ACL Liability Limit does not apply or is not otherwise enforceable:
- 16.1.1.3. our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law.
- 16.1.2. For major failures with the service, Customer is entitled:
- 16.1.2.1. to cancel your service contract with us; and
- 16.1.2.2. to a refund for the unused portion, or to compensation for its reduced value.

- 16.1.3. Customer is also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, Customer is entitled to have the failure rectified in a reasonable time. If this is not done, Customer is entitled to a refund for the goods and to cancel the contract for the Product and obtain a refund of any unused portion. Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service; and
- 16.1.4. the benefits to Customer under any “warranty against defects” (as defined in Regulation 90 issued under the ACL) are in addition to other rights and remedies under a law in relation to the goods or services to which the warranty relates. A claim under any such warranty must be provided in accordance with section 15.4 (Notices) and Customer is responsible for its expenses incurred in making a claim.

EXHIBIT B

“Order Form”

(follows behind)



Contract-161091
Q-00206497

Order Form

Order Form Effective Date: 08/31/2023

This Order Form is entered into pursuant to and hereby incorporates the End User Agreement located at <https://terms.tibco.com/#end-user-agreement> and sets forth the maximum Number of Units by License Type that Customer may use of the Products during the specified Term. In the event of any conflict between this Order Form and the End User Agreement, the Order Form will prevail. Capitalized terms used in this Order Form and not otherwise defined, are defined in the End User Agreement. Any terms incorporated by written reference (including written reference to information contained in a URL or referenced policy) form a part of this Order Form as if set forth herein.

Customer agrees to the terms and conditions of this Order Form and has caused this Order Form to be signed and delivered by its duly authorized officer or representative. Company's acceptance of this Order Form will be deemed to have occurred on Company's initial delivery of products or services under this Order Form. Customer shall use the Software in accordance with this Order Form, the Agreement, and Documentation.

Company: Cloud Software Group, Inc. – 851 West Cypress Creek Road - Fort Lauderdale - Florida - 33309

Customer Name ("Customer"): Harris County TX

Street: 1001 Preston 5th Floor

City: Houston

State/Province: Texas

Zip/Postal Code: 77002

Country: United States

Contact: Accounts Payable | vendorinvoices@aud.hctx.net

All monetary denominations are in USD

Software and Services

1. Subscription.

Software (License Type)	Maintenance/Service Level	Unit	Number of Units	Term Start Date	Term End Date
ibi™ WebFOCUS® - Basic Edition (ProdPlus)	ibi Silver	50xNamed User	1	08/31/2023	08/30/2024
ibi™ WebFOCUS® - Embedded User Add-On (ProdPlus)	ibi Silver	1000xNamed User	1	08/31/2023	08/30/2024

Total Subscription Fee	\$117,836.00
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Total Fees Due	\$117,836.00
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2. Additional Terms.

2.1 Payment Terms. Customer shall pay Company the Total Fees Due net thirty (30) days from the date of the invoice.



2.2 Termination of Prior Licenses and Maintenance.

- A. Upon this Order Form Effective Date, all of Customer's rights to Company Software and associated Maintenance purchased under agreements, Orders or Purchase Orders between Company and Customer or between any authorized reseller of Company and Customer (collectively, the "Prior Licenses") including, without limitation, Master Software License Agreement No. 7089 dated effective February 19, 1997, between Information Builders, Inc., predecessor in interest to Company, and Customer, as amended (the "MSLA"), and its Riders (as defined in the MSLA), are terminated.
- B. Customer shall not receive any refunds or credits for the terminated Prior Licenses or associated Maintenance.
- C. Upon this Order Form Effective Date, Customer must cease using, de-install, return, or destroy all copies of the Prior Licenses unless and solely to the extent continued use and deployment of such Software is included in the Subscription entitlements stated in this Order Form. Customer's total deployment of Company Software shall not exceed the Number of Units stated in Section 1 above. This Order Form represents Customer's total entitlement to Company Software and services.
- D. Except as expressly set forth in this Order Form all other terms and conditions of the Agreement remain intact and un-changed.

This Order Form may be executed in one (1) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument, and this Order Form may be executed by facsimile or electronic signature and an executed copy delivered by either party by facsimile or similar instantaneous electronic transmission device and such delivery is valid and effective for all purposes.

Harris County TX

Cloud Software Group, Inc.

Signature:

Signature:

A handwritten signature in black ink, appearing to read "Rafael Carmona Toscano".

Name:

Name:

Rafael Carmona Toscano

Title:

Title:

VP Legal

Date:

Date:

Jan 23, 2024



ORDER OF COMMISSIONERS COURT
Authorizing execution of an Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the ____ day of _____, 2024 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AN AGREEMENT
WITH CLOUD SOFTWARE GROUP, INC.**

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Briones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED that County Judge Lina Hidalgo be, and she is hereby, authorized to execute for and on behalf of Harris County, a sole source agreement with Cloud Software Group, Inc. to provide Harris County Universal Services with certain software license and support services, in an amount not to exceed One Hundred Seventeen Thousand Eight Hundred Thirty-Six and No/Dollars (\$117,836.00), for a term continuing until August 30, 2024, with the option of four (4) renewal terms. The Amendment is incorporated herein as though fully set forth word for word.