AGENDA PLACEMENT FORM

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

Date: 08.05.2024

Meeting Date: 08.12.2024

Submitted By: Lance Anderson

Department: Purchasing

Signature of Elected Official/Department Head:

Court Decision:
This section to be completed by County Judge's Office

Johnson County Commissioners Court
★ APPROVED ★

8-12-24

Description:

Consider and Approve with Authorization for County Judge to Sign ATS360 Master Services Agreement, Softwre as a Service Agreement, and Terms Addendum for ATS360 NetSuite native applicant tracking system.

(May attach additional sheets if necessary)

Person to Present: Steve Watson

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one) ☑ PUBLIC ☐ CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 5 minutes

Session Requested: (check one)

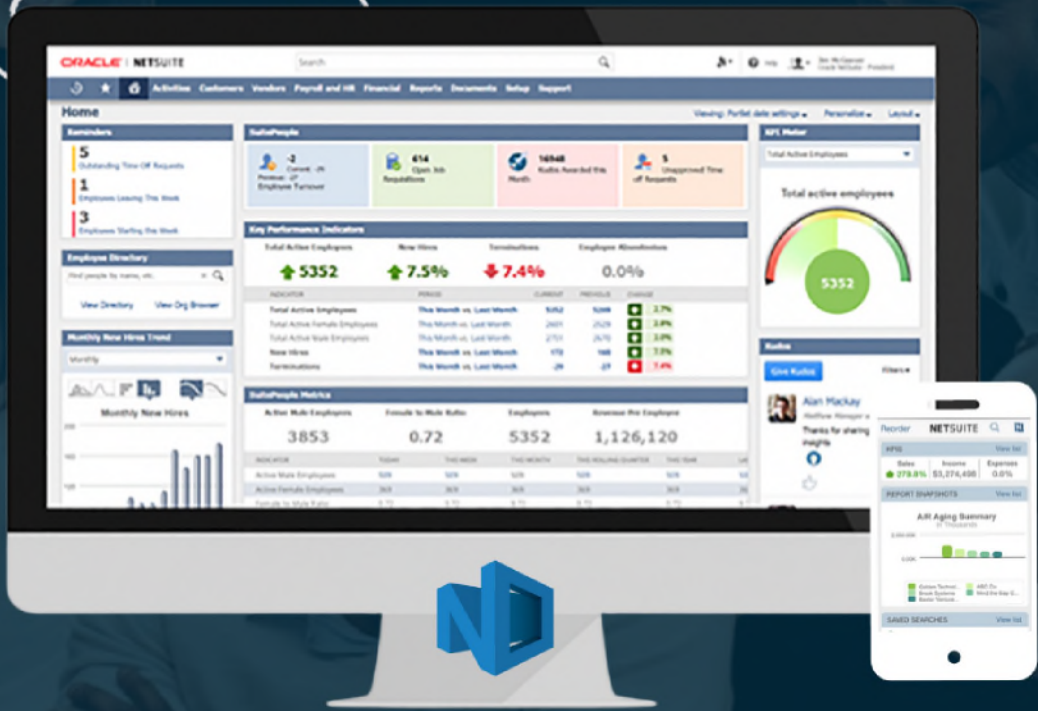☑ Action Item ☐ Consent ☐ Workshop ☐ Executive ☐ Other _____

Check All Departments That Have Been Notified:

☑ County Attorney ☑ IT ☑ Purchasing ☑ Auditor

☑ Personnel ☐ Public Works ☐ Facilities Management

Other Department/Official (list) _____

**Please List All External Persons Who Need a Copy of Signed Documents
In Your Submission Email**

Approved in CC on 9/11/2023

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ATS360

ATS360 Master Services Agreement

Johnson County
August 2nd, 2024

ATS360 Master Services Agreement

Johnson County, TX
2 North Mill Street Cleburne, TX 76033
August 2nd, 2024

This **ATS360 Master Services Agreement "Agreement"** describes the software customization, integration, and other such services ("Services") to be performed by NetDynamic Consulting Incorporated ("NetDynamic Consulting Incorporated") for the Customer named above. The Services will be delivered as a fixed price service ("engagement"). At the outset of the Engagement, and for the duration, NetDynamic Consulting Incorporated will assign a lead project consultant ("Project Lead"), and other technical consultants ("NetDynamic Consulting Incorporated Resources") who will plan, perform, and support the work performed. At the outset of the Engagement, and for the duration, the Customer shall nominate a project lead ("project lead") who will act as the primary point of contact for information required by NetDynamic Consulting Incorporated Resources carrying out the project work, and act as the final approver of work requests. Other individuals required to provide information on behalf of the customer ("Customer Resources") will also be called on as needed. Work requests from other Customer Resources are expected to be approved by the project lead, unless otherwise arranged by the project lead.

This Agreement, when executed by the Customer and NetDynamic Consulting Incorporated, will become a legally binding agreement between the parties, effective as of **August 2nd, 2024** (the "Effective Date"). If the Customer uses the services without executing this Agreement, it shall be deemed to have agreed to be bound by the terms of this contract. The Agreement together with the ATS360 Software as a Service Agreement hereto shall constitute the entire agreement between NetDynamic Consulting Incorporated and Customer with respect to the Engagement.

BACKGROUND AND PROJECT OVERVIEW

Johnson County, TX., referred to in this document as Customer (Customer or the Customer) have contacted NetDynamic Consulting Incorporated for NetSuite consulting/implementation services associated with the installation and configuration of ATS360 to the Customer's NetSuite.

Customer Project Obligations

- Attendance and participation in project kickoff, and all consultant meetings
- Provide NetDynamic Consulting Incorporated dedicated login (up to two) access each to their NetSuite Production account and Sandbox account, during the implementation period until the end of the first month after go-live.
- Secure all necessary NetSuite software licenses.

Scope & Services Overview

The Services are defined as follows:

- Access to the ATS360 software-as-a-service applicant tracking system ("ATS360").
- A license to the Software on the terms and conditions as described in the Agreement.
- Implementation of the Software (the "Implementation") on Customer's Oracle NetSuite instance.

NetDynamic Consulting Incorporated will perform the following Professional Services, and warrants that based upon its understanding of Customers familiarity and experience with NetSuite - this agreement is sufficient to provide full use and competent access to ATS360 within the timeframe outlined here, to assist the customer with the implementation of NetDynamic ATS360 in the Customer's Oracle NetSuite instance (the "NetSuite instance"):

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Implementation
A. Configuration

- Conduct one (1) "Getting Started" session, via Zoom web-based conferencing
- Configure Customer License on NetDynamic License Server
- Install ATS360 into the target Customer NetSuite Account
- Create ATS360 to the identified Subsidiaries with corresponding ATS licenses.
- Add ATS User role to specified Employees based on the Licensed Head Count
- Enable modules that have been identified by the customer

B. Data Migration

During the data migration process, NetDynamic Consulting Incorporated will provide consultation to review import templates and assist in providing leading best practices for this process.

C. Key Functionality Training

NetDynamic Consulting Incorporated will provide training for each of the following key functionalities before the customer manually creates them within ATS360.

- ATS Job Opening
- ATS Job Application
- ATS Contact
- ATS Configuration Record

Consultant Obligations

Resource	Obligations
Consultant	Focus on project implementation, obligations, including: Provide up to five (5) hours of consulting support, which must be utilized within a period of thirty (30) consecutive business days and must be used within the Professional Services Period. Consulting support may include the following: ○ End-user assistance. ○ Identification of further optimization requirements.

Project Reporting and Communication

NetDynamic Consulting Incorporated espouses a very open and direct method of communication. During the implementation, Customer resource(s) will be put in direct contact with the NetDynamic Consulting Incorporated resource(s) performing the work and will have access to that resource during regular working hours and will receive regular updates. Communication with our customers is achieved by way of:

- Telephone
- Email
- Google Sheets
- Weekly Hourly Usage/Project Reports
- Zoom web-based conferencing

Customer Obligations

Customer project lead, and Customer Resources essential to the Solution should be reasonably available during regular business hours, (9:00 a.m. to 5:00 p.m., EST) for the duration of the Services provided by NetDynamic Consulting Inc in order to ensure timely turnaround, including representatives from all relevant Customer business and technical groups.

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a. Customer will provide NetDynamic Consulting Inc staff with remote access to NetSuite, legacy software, and all other required software/services ("Software"), and/or onsite access to Customer facilities as needed to assist with the Services. If required for any specific project, Customer will assign appropriate staff to work with NetDynamic Consulting Inc on all work performed in the Customer's environment. Further, Customer will provide NetDynamic Consulting Inc staff with access to the Customer development, staging, test, and production "Software" accounts that are to be managed as part of this Agreement.

b. Prior to the start of the Engagement, Customer will designate a Consulting Lead. All 'official' NetDynamic Consulting Inc communications will be addressed to the project lead and such person shall have the authority to act for Customer and any third-party participants in all aspects of the Services. In addition, the project lead will:
   - Provide the following prior to the start of the engagement and when an update has taken place, to the extent it is available: the schema of current "Software" implementations (i.e. NetSuite Business Requirements Documents; data models and counts, source code for any custom software code in use, and all other pertinent information (e.g. class and department structures or any other pertinent information about the previous implementation, if unknown to NetDynamic Consulting Inc.)
   - Attend Engagement status calls and serve as the interface between the NetDynamic Consulting Inc Resources and all Customer departments and any third-party participants participating in the Services.
   - Help resolve Services issues and escalate issues (including to Customer's executive management as necessary) within the Customer organization and any third- party participants, as necessary.
   - Arrange for all necessary clearances, access to all areas of "Software" that are to be managed, passwords, badges, etc. to be provided to NetDynamic Consulting Inc staff to enable them to perform the Services, including if onsite visits are required.
   - Ensure availability of all required hardware and non-NetSuite Software for the timely completion of the Services, in accordance with the Services schedule, and manage any required configuration and customization of non-NetSuite products and systems and coordinate these activities with NetDynamic Consulting Inc.
   - Act as the final approver for all Customer requests for projects or services. The project lead will prioritize initiatives, approve requests and provide NetDynamic Consulting Inc with guidance as to the order in which tasks are completed

c. Prior to the start of the Engagement, or as requested by NetDynamic Consulting Inc, Customer will provide NetDynamic Consulting Inc Resources with access to all third-party code, libraries and drivers required for the maintenance of the integration project.

Intellectual Property – Code, Routines and Scripts

Any software code developed for Customer during the Engagement, including: custom code, scripts, and/or routines will be delivered (in 'source' and production format) to Customer. Ownership of scripts, code and routines will be passed to, and be retained by Customer, while NetDynamic Consulting Inc. retains the right to access source code for the purposes of ongoing testing and maintenance of the Customer accounts.

Resourcing Model

NetDynamic Consulting Inc. operates under a shared-resource model, which means that your NetDynamic Consulting Inc. resource(s) work on multiple projects at once; they are not dedicated to your project on a full-time basis.

Meetings will take place within the standard operating hours. NetDynamic Consulting Inc. will conduct all sessions online. Additional costs will apply for off-hours and/or weekend meetings. By default, your NetDynamic Consulting Inc. project team will be assigned based on availability. This may result in a fully onshore, offshore, or blended resource model.

Project Environment

NetDynamic Consulting Inc. recommends that the Client utilizes sandbox (or test/development) environments for development and testing. Ideally, each system impacted by the solution should have a sandbox environment.

If the Client does not have a sandbox environment for any system being integrated, all project stages will be completed in the Production instance.

1. If the Client obtains a sandbox environment during the course of the project, additional charges may apply to migrate the solution to the sandbox environment. The remaining work would be completed in the sandbox environment.

2. If the Client purchases a sandbox after Go-Live, additional charges may apply to migrate the solution to the sandbox environment. Immediately prior to this work, the Client must request that the 3rd Party Provider refresh the sandbox from production. Once the Sandbox has been refreshed, NetDynamic Consulting Inc. will configure the solution in the sandbox environment.

If the Client has purchased the Sandbox subscription, which is an additional instance of the integration that is deployed in the sandbox environments, this Perpetual Sandbox subscription will include the following:

1. Implementation, testing, and Client UAT will be performed in the sandbox environments. Once Client UAT has been completed and approved, the Solution will be bundled and installed into the production environments.
2. Client is responsible for ensuring that configuration or customizations made by the Client are made in both the sandbox and production environments.
3. Client is responsible for final testing and sign-off in the production environment. Unless explicitly asked by the Client, NetDynamic Consulting Inc. will not make any modifications in the production environment. Any fixes or changes will be made in the sandbox environment and then bundled and installed into the production environment. This approach will be used throughout the entire project.
4. If the Client has a sandbox environment for each system being integrated, the Solution will continue to be available in the sandbox environments after Go Live. Further modifications can be made and tested first in sandbox and then migrated to the production environments.

Assumptions

1. At the time that Implementation starts, the Sandbox instance is an exact replica of the Production instance.
2. Once implementation has started, if the Sandbox is refreshed, expired, or deleted and NetDynamic Consulting Inc. loses any work in progress, additional charges will apply to re-implement the solution in the Sandbox instance and the Client is responsible for these additional fees.
3. If the Implementation has been completed in Sandbox and, for reasons beyond NetDynamic Consulting Inc. 's control, the solution cannot yet be deployed in Production, NetDynamic Consulting Inc. will consider the project closed. When the Client is ready to deploy the solution in Production, the Client may log a support case to get this accomplished.

Project Assumptions and Customer Obligations

1. Customer Resources Availability: Project timelines and estimates are based on Customer availability. In most cases, NetDynamic Consulting Inc. will require timely access to key Customer resources. Delays or defaults attributable to the customer are not the responsibility of NetDynamic Consulting Inc.

Deviations from these assumptions may lead to commensurate changes in the timeline and pricing.

1. Client acknowledges that its participation, availability, and cooperation is critical for the success of the Project. Project timelines are based on availability of Client resources and key decision makers. Lack of access to project stakeholders or lack of timely decision making will impact project timelines and pricing. Client agrees to provide NetDynamic Consulting Inc. with prompt and adequate responses to its requests for information and other requests related to the services to be performed under this Proposal.
2. The services in scope of this Proposal will be delivered in one project phase. If the Client chooses a partial deployment of the solution, additional charges may apply to implement the remaining scope in a future project phase.
3. The following circumstances may cause the project to be put on hold. When a project is put on hold, NetDynamic Consulting Inc.'s resources will be removed from the project and reallocated to other work. NetDynamic Consulting Inc. will make multiple attempts to contact the Client prior to putting the project on hold, however if NetDynamic Consulting Inc. does not receive a response, the project will be put on hold.
    1. If the Client is not ready to start the project within 2 weeks of the start date NetDynamic Consulting Inc. and the Client agreed to

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2. Once the project has started, if, for any reason, the Client or a 3rd Party is unresponsive or stalls the project for more than 2 weeks

4. If the project has been put on hold, in order to re-engage, additional charges may apply as set forth in the Agreement; additionally, the subscription price and term is not adjusted.

5. If the project has been on hold for 12 months, it is assumed that the Client wishes to cancel the project and NetDynamic Consulting Inc. will initiate the project cancellation process

Confidentiality

For purposes of this Agreement, "Confidential Information" means the terms of this Agreement including the pricing and other terms reflected in all Financial Data, Estimates, Customer Data, NetDynamic Consulting Inc. technology and technical information, product designs, business plans and processes, marketing strategies and content, and all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is clearly identified in writing or verbally at the time of disclosure as confidential. Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party; or (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party. Receiving Party agrees: (a) to keep confidential all Confidential Information disclosed to it by the Disclosing Party; (b) not to use or disclose the Confidential Information of the Disclosing Party except to the extent necessary to perform its obligations or exercise rights under this Agreement, except with the Disclosing Party's prior written consent; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information) and to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent of the court or other governmental authority or regulation.

ATS360 Master Services Agreement

Fees Summary and Payment Terms

The professional services described in this Agreement are based on NetDynamic Consulting Inc.'s NetSuite ATS360 Implementation services and monthly license fees.

License Requirements					Optional
License Quantity				**Year 1 - 5**	**Year 6 - 10**
				(Per Year)	(Per Year)
# of Platform License				1	1
# of Subsidiary License				0	0
# of HR License				44	44
# of Hiring Manager License				40	40
Government Discount				68%	68%
Inflation adjustments inflation - Yr 6 - 10 at annual rate of 5%					5%
Licenses & Support - 10 Year Contract					
Item & Description	**Quantity**	**Cost**	**Term (Months)**	**Year 1 - 5**	**Year 6 - 10**
				(Per Year)	(Per Year)
ATS360 - Platform License		$832.92	12	$9,995.00	$11,598.02
ATS360- Subsidiary License		$207.92	12	$0.00	$0.00
ATS360 - HR License User *		$99.95	12	$52,773.60	$61,237.57
ATS360 - Hiring Managers License *		$49.95	12	$23,976.00	$27,821.33
Resume Parsing	6,000	$0.16	12	$960.00	$1,113.97
ATS360 Premium Support Users have access to 24x7 Email support and 2 updates per year.	1	$41.65	12	$499.75	$579.90
Subtotal				$88,204.35	$102,350.79
Discount - Platform/Sub Licenses				-$6,826.59	-$4,594.34
Discount - User Licenses				-$52,419.98	-$60,827.23
Total				**$28,957.79**	**$36,929.23**

Implementation					
1X Implementation Fee - One time				$35,200.00	
Discount - Implementation**				-$12,000.00	
Sub Total **				**$23,200.00**	
Implementation Fee - year one				**$11,600.00**	
Implementation Fee - year two				**$11,600.00**	

* Subject to adjustment based on total number of licenses required.

** Implementation Service Fees - 50% due upon signing. 50% due in one year after signing.

Offer expires August 31st, 2024 at 12pm EST

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Payment Schedule					
Description	**Period**	**Amount Due**	**Currency**	**Frequency**	**Due date***
Implementation	Year 1	$11,600.00	USD	1	Upon Siging
Platform + Subsidiary Licenses	Year 1	$3,168.42	USD	1	Upon Siging
	Total	$14,768.42	USD		
User Licenses, Fees, & Support	Year 1 - monthly	$2,149.11	USD	12	Monthly ACH
Grand Total - Year 1		**$40,557.79**	**USD**		
Implementation	Year 2	$11,600.00	USD	1	1 year from signing date
Platform + Subsidiary Licenses	Year 2	$3,168.42	USD	1	1 year from signing date
	Total	$14,768.42	USD		
User Licenses, Fees, & Support	Year 2 - monthly	$2,149.11	USD	12	Monthly ACH
Grand Total - Year 2		**$40,557.79**	**USD**		
Implementation	Year 3-5	$0.00	USD	1	2 years from signing date
Platform + Subsidiary Licenses	Year 3-5	$3,168.42	USD	1	2 years from signing date
	Total	$3,168.42	USD		
User Licenses, Fees, & Support	Year 3-5 - monthly	$2,149.11	USD	12	Monthly ACH
Grand Total - Year 3-5		**$28,957.79**	**USD**		

* Exact date would be added once contract signing date is determined.

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ATS360 Master Services Agreement

Agreement Term and Termination

1. Term: The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until Five (5) years from such date (the "Initial Term"). This Agreement will automatically renew for an optional successive terms of Five (5) years unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"). If the Term is renewed for any Renewal Term(s) pursuant to this Section, the terms and conditions of this Agreement during each such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in the fees payable hereunder by Customer during the applicable Renewal Term.

2. Termination: In addition to any other express termination right set forth in this Agreement:

   (i) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;

   (ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

   (iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, liquidator or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Terms and Conditions

1. Travel time and expenses, limited to reasonable lodging, transportation and meals incurred during onsite visits, are the responsibility of the Customer and will be invoiced by NetDynamic Consulting Inc. NetDynamic Consulting Inc. Resources will comply with Customer travel policy whenever possible, so long as the policy is supplied to NetDynamic Consulting Inc. Resources at least 10 business days prior to planned travel times.

2. Prompt responses to the request for information and access to systems is essential to the performance of the services outlined in this Agreement. Any delays attributable to Customer's unresponsiveness or non-cooperation will not be the responsibility of NetDynamic Consulting Inc. Customer acknowledges and agrees to provide NetDynamic Consulting Inc. with prompt and adequate responses to NetDynamic Consulting Inc.'s requests for information and other requests related to the services to be performed under this Agreement. In the event that NetDynamic Consulting Inc. has made a request and Customer has not responded promptly with the requested information, NetDynamic Consulting Inc. Consultant may issue a "Final 45-Day Project Notice" ("Final Notice") to Customer. If Customer does not respond as requested to the Final Notice, Customer agrees that NetDynamic Consulting Inc. shall be relieved of any further obligations which have not been completed under the Agreement. In addition, all professional services fees associated with the Agreement shall be considered earned in full as of the expiration of the forty-five (45) day period. Any and all services requested by Customer following the expiration of the aforementioned forty-five (45) day period will require Customer and NetDynamic Consulting Inc. to execute a new Agreement and Customer shall be responsible for any additional professional services fees contemplated thereunder, even if listed in the original Agreement.

3. NetDynamic Consulting Inc. reserves the right to use third parties (who are under a strict covenant of confidentiality with NetDynamic Consulting Inc., including, but not limited to, offshore subcontractors) to assist with the data migration, configuration, implementation and custom code development processes.

4. Governing Law. This Agreement and all related documents, including all exhibits and schedules attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and

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construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario.

5. Choice of Forum. Any legal suit, action, litigation, or proceeding of any kind whatsoever arising out of, from, or relating to this Agreement, the services provided hereunder, and all contemplated transactions, shall be instituted in the courts of the Province of Ontario, Canada.

Disclaimer

The information contained in this Agreement is for general information purposes only. NetDynamic Consulting Inc. reserves the right to make additions and/or modifications to the contents of this Agreement at any time without prior notice.

Change Orders for additional billable hours to this Agreement may be required, should the original number of budgeted hours become exhausted. Any work conducted outside of scope will be billed at a discounted rate of $145.00 USD per Hour.
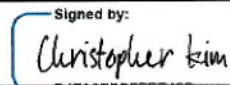
General Provisions

Designated Personnel - Both NetDynamic Consulting Inc. and Customer shall identify by name and Email contracts all primary personnel who will be involved in the provision of Services during the engagement set out in this Agreement.

The list of authorized Customer Resources and personnel will be set forth in this agreement, provided that such list may be revised by Customer at any time if NetDynamic Consulting Inc. is informed in writing at least 2 business days prior to effect.

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ATS360 Master Services Agreement

Signatures

IN WITNESS WHEREOF, the Parties have executed this Agreement by their authorized representatives in one or more counterparts, each of which shall be deemed an original, and it shall be effective as of the last date executed below:

Johnson County, TX	NetDynamic Consulting, Inc.	NetDynamic Consulting, Inc.
Signature: *[signature]*	Signature: DocuSigned by: *Sampson Chan*	Signature: Signed by: *Christopher Kim*
Date: August 12, 2024	Date: 8/5/2024	Date: 8/5/2024
Name: Christopher Boedeker	Name: Sampson Chan	Name: Christopher Kim
Title: County Judge	Title: CFO	Title: CEO
Email: judgeboedeker@ johnsoncountytx.org	Email: Schan@netdynamicinc.com	Email: Ckim@netdynamicinc.com

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ATS360 Software as a Service Agreement

This **ATS360 Software as a Service Agreement** (this "**Agreement**"), is a binding contract between NetDynamic Consulting Incorporated ("**Provider**") and Customer identified on the ATS360 Master Services Agreement as the customer ("**Customer**"). Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**".

THIS AGREEMENT TAKES EFFECT AS OF THE DATE IDENTIFIED ON THE INITIAL ATS360 Master Services Agreement AS THE EFFECTIVE DATE (the "**Effective Date**"). BY SIGNING THE ATS360 MASTER SERVICES AGREEMENT OR USING THE SERVICES CUSTOMER (A) ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT; (B) REPRESENTS AND WARRANTS THAT CUSTOMER HAS THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT; AND (C) ACCEPTS THIS AGREEMENT AND AGREES THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS.

IF THE CUSTOMER DOES NOT AGREE TO THESE TERMS, PLEASE DO NOT SIGN THE ATS360 MASTER SERVICES AGREEMENT. IF CUSTOMER DOES NOT ACCEPT THESE TERMS, CUSTOMER MAY NOT ACCESS OR USE THE SERVICES.

1.   **Definitions**.

    (a)   "**Aggregated Statistics**" means data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

    (b)   "**Authorized User**" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Provider System under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Provider System has been purchased hereunder.

    (c)   "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Provider System.

    (d)   "**ATS360 Master Services Agreement**" means the initial ATS360 Master Services Agreement.

    (e)   "**Order Form**" means each service order form entered into by the parties referencing this Agreement.

    (f)   "**Provider IP**" means the Provider System, the SaaS Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of

Customer's access to or use of the Services or Software, but does not include Customer Data.

(g)   "**Provider System**" means the Services and the Software.

(h)   "**Software**" means tools or other software that Provider makes available for download or installs specifically for purposes of facilitating access to, operation of, or use with the Services, and any updates Provider may make available to such software from time-to-time. For the avoidance of doubt, Software does not include Third-Party Products.

(i)   "**Software Licence Terms**" has the meaning set out in Section 2(b).

(j)   "**SaaS Documentation**" means Provider's end user documentation relating to the Services available at:
https://netdynamicconsulting.com/ats-knowledge-base/getting-started/ats-overview/

(k)   "**Services**" means the services provided by Provider under this Agreement and described in one or more sequentially numbered written ATS360 Master Services Agreement.

(l)   "**Third-Party Products**" means any third-party products provided with or incorporated into the Provider System, including any open-source software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licences, or any other licence that is approved by the Open Source Initiative.

2.   **Access and Use**.

(a)   **Provision of Access**. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12(h)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services. The total number of Authorized Users will not exceed the number set forth in the most recently executed ATS360 Master Service Agreement, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.

(b)   **Software and SaaS Documentation Licence**. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(h)) license during the Term to: (i) use Software, in object code format, solely for Customer's internal use in connection with its use of the Services and (ii) use and make a reasonable number

of copies of the SaaS Documentation solely for Customer's internal business purposes in connection with Customer's use of the Services during the Term. In the event of any inconsistency between the Software Licence Terms and this Agreement, the Software Licence Terms shall apply only with respect to the Software that the Software Licence Terms reference and not the Services provided under this Agreement.

(c) **Use Restrictions**. Customer shall not use the Provider IP for any purposes beyond the scope granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Provider IP, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Provider IP; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Provider IP, in whole or in part; (iv) remove any proprietary notices from the Provider IP; or (v) use the Provider IP in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) **Reservation of Rights**. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licences expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e) **Suspension**. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 5(a) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event

giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f)   **Aggregated Statistics**. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; *provided that* such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

(g)   **Subcontractors**. Provider may from time to time in its discretion engage third parties to perform the Services.

(h)   Provider reserves the right, in its sole discretion, to make any changes to the Services and SaaS Documentation that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the cost efficiency or performance of the Services; or (b) to comply with applicable law. Without limiting the foregoing, either Party may, at any time during the Term, request in writing changes to the Services. The Parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order ("**Change Order**") signed by both Parties whether made by an additional ATS360 Master Services Agreement referencing the Initial ATS360 Master Services Agreement and any additional Order Forms or by a new Order Form reflecting and memorializing all changes made to the Services ordered by Customer.

3.   **Customer Responsibilities**.

(a)   **General**. Customer is responsible and liable for all uses of the Provider IP resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Provider IP and shall cause Authorized Users to comply with such provisions.

(b)   **Third-Party Products**. Provider may from time to time make Third-Party Products available to Customer. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the applicable flow-through provisions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products. The Software may also contain certain open-source software. Customer understands and acknowledges that such open-source software is not licensed to Customer pursuant to the provisions of this Agreement and that this Agreement may not be construed to grant any such right and/or licence. Customer shall have only such rights and/or licences, if any, to use the open-source software as set forth in the applicable third-party licence.

(c)   **ATS360 Master Services Agreement.** Customer shall be responsible for all obligations and other responsibilities as indicated in the ATS360 Master Service Agreement.

4.   **Support**.

(a)   **Support**. The access right granted hereunder entitles Customer to the support services described from time to time on Provider's website located at https://netdynamicconsulting.com/ats-knowledge-base/uncategorized/ats360-support-page/ (the "**Support Services**"):

(i)   for the length of time set forth in an applicable ATS360 Master Service Agreement.; and

(ii)   thereafter, solely if Customer purchases additional support services.

5.   **Fees and Payment**.

(a)   **Fees**. Customer shall pay Provider the fees ("**Fees**") as set forth in the ATS360 Master Service Agreement. without set-off or deduction. Customer shall make all payments hereunder in United States dollars on or before the due date set forth in the ATS360 Master Service Agreement. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of eleven percent (11%) per year calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including legal fees, court costs, and collection agency fees; and (iii) if such failure continues for thirty (30) days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

(b)   **Taxes**. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all Federal

and state tax, harmonized sales tax (HST), goods and services tax (GST), provincial sales tax (PST), use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, provincial, territorial or local governmental, or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

6. **Confidential Information**. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. **Intellectual Property Ownership; Feedback**.

(a) **Provider IP**. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

(b)   **Customer Data**. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide licence to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c)   **Feedback**. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8.   **Warranty Disclaimer**.

(a)   THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE.

9.   **Indemnification**.

(a)   **Provider Indemnification**.

(i)   Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable legal fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services,

or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's Canadian patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defence and settlement of such claim.

(ii)   If a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Provider System, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii)   This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Provider System in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Provider System not made by Provider; (C) Customer Data ; or (D) Third-Party Products.

(b)   **Customer Indemnification**. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or wilful misconduct; (ii) use of the Provider IP in a manner not authorized by this Agreement; (iii) use of the Provider IP in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Provider IP not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c)   **Sole Remedy**. THIS 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PROVIDER IP INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10.   **Limitations of Liability**. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, AGGRAVATED, SPECIAL, ENHANCED, OR

PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED TWO (2) TIMES THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR FORTY THOUSAND CANADIAN DOLLARS ($40,000.00 CAD), WHICHEVER IS LESS.

11. **Term and Termination**.

(a) **Term.** The initial term of this Agreement, as outlined in the ATS360 Master Services Agreement.

(b) **Termination.** As outlined in the ATS360 Master Services Agreement.

(c) **Effect of Expiration or Termination**. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under 6, Customer shall cease using and delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d) **Survival**. This Section 11(d) and 1 (Definitions), 5 (Fees and Payment), 6 (Confidential Information), 7 (Intellectual Property Ownership; Feedback), Section 8(b) (Warranty Disclaimer), 9 (Indemnification), 10 (Limitation of Liability), and 12 (Miscellaneous) survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. **Miscellaneous.**

(a) **Entire Agreement; Paramountcy.** This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. Except as otherwise set forth in Section 2(b), in the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and

any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b)   **Notices**. Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (other than routine communications having no legal effect) (each, a "**Notice**") in writing and addressed to the other Party at the addresses set forth in the most recent ATS360 Master Service Agreement. (or to such other addresses that may be designated by the receiving party from time to time in accordance with this Section). Notices sent in accordance with this Section will be conclusively deemed validly and effectively given: (a) on the date of receipt, if delivered by personal delivery, or by a nationally recognized same day or overnight courier (with all fees prepaid); (b) upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment), if delivered by email; (c) when sent, if sent by facsimile (with confirmation of transmission) on the date of transmission if a business day or if not a business day or after 5:00 p.m. on the date of transmission, on the next following business day; or (d) on the 1st day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

(c)   **Force Majeure**. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Provider hereunder), when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the impacted party's ("**Impacted Party**") control including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, tsunami, fire, earthquake, explosion; (c) epidemics, pandemics, including the 2019 novel coronavirus pandemic (COVID-19); (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) government order, law or actions; (f) embargoes or blockades in effect on or after the date of this Agreement; (g) national or regional emergency; (h) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; (i) shortage of adequate power or telecommunications or transportation facilities; (j) failure of any governmental or public authority to grant a necessary licence or consent; (k) other events beyond the control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay

remains uncured for a period of sixty (60) days following written notice given by it under this Section 12(c), either Party may thereafter terminate this Agreement upon seven (7) days' written notice.

(d)   **Amendments and Modifications**. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

(e)   **Waiver**. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f)   **Severability**. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g)   **Governing Law.** This Agreement and all related documents including all order forms, exhibits and schedules attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario. The Parties agree that the *United Nations Convention on Contracts for the International Sale of Goods* (CISG) and Ontario's *International Sales Convention Act*, RSO 1990, c I.10 do not apply to this Agreement.

(h)   **Choice of Forum**. Any legal suit, action, litigation, or proceeding of any kind whatsoever in any way arising out of, from, or relating to this Agreement, including all service order forms, exhibits, schedules, attachments, and appendices attached to this Agreement, the services provided hereunder, and all contemplated transactions, shall be instituted in the courts of the Province of Ontario (Canada), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation, or other proceeding brought in any such court. Each party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The parties irrevocably and unconditionally waive any objection to the venue of

any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(i)   **Assignment**. Customer may not assign or otherwise transfer any of its rights, or delegate, subcontract or otherwise transfer any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Any purported assignment, transfer, delegation or subcontract in violation of this Section is null and void. No assignment, transfer, delegation or subcontract will relieve the assigning or delegating Party of any of its obligations hereunder.

(j)   **Successors and Assigns**. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(k)   **Equitable Relief**. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(l)   **Language**. The Parties have expressly required that this agreement and all related documents, including notices and other communications, be drafted in the English language only. Les Parties ont expressément exigé que la présente convention ainsi que tous les documents qui s'y rattachent, incluant les avis et les autres communications, soient rédigés en langue anglaise seulement.

_____

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM TO NETDYNAMIC CONSULTING INCORPORATED AGREEMENT
(NETDYNAMIC ATS360)

_____

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between **JOHNSON COUNTY, TEXAS,** a political subdivision of the State of Texas, (hereinafter referred to as "**COUNTY**" or "**JOHNSON COUNTY**" and **NETDYNAMIC CONSULTING INCORPORATED. NETDYNAMIC CONSULTING INCORPORATED** may be referred to herein as "**NETDYNAMIC**" or "**COMPANY**".

1.2

JOHNSON COUNTY and NETDYNAMIC as applicable, may be collectively identified as the **"Parties"** or each individually a **"Party". This Addendum is part of the Agreement with NETDYNAMIC and is intended to modify (as set forth in this Addendum) all documents, including the ATS360 Master Services Agreement, the ATS360 Software as a Service Agreement, and any Quotes or Proposals put forth by NETDYNAMIC. This Addendum modifies (as set forth in this Addendum)** any other document proffered to **COUNTY by NETDYNAMIC** or their agents and other documents defining the Agreement between **JOHNSON COUNTY, TEXAS and NETDYNAMIC.**

1.3

NOT APPLICBLE (Co-op Reference)

1.4

This Addendum, combined with the terms of the attached Proposal from **NETDYNAMIC CONSULTING INCORPORATED,** upon execution by both parties, constitutes a contractual Agreement between **JOHNSON COUNTY, TEXAS and NETDYNAMIC CONSULTING INCORPORATED**

2.1

This Agreement will be governed by and construed according to the laws of the <u>State of Texas</u>. Venue for any action or claim arising out of the Agreement must be in the state

district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas.

2.2

Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.3

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.4

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. JOHNSON COUNTY will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, JOHNSON COUNTY **CANNOT** enter into an agreement whereby **JOHNSON COUNTY agrees to indemnify** or **hold harmless** any other party; therefore, all references of any kind to JOHNSON COUNTY indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

> **… But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) …**

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that COUNTY is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that COUNTY'S general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that COUNTY does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that COUNTY will not agree to waive any rights and remedies available to COUNTY under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that COUNTY will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that COUNTY will provide statutory workers compensation for its employees; however, COUNTY does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

    a.   the date the governmental entity receives the goods under the contract;

    b.   the date the performance of the service under the contract is completed; or

    c.   the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.025 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

5.2

Texas Local Government Code Section 113.064. Approval of Claims by County Auditor, provides:

"(a) In a county that has the office of county auditor, each claim, bill, and account against the county must be filed in sufficient time for the auditor to examine and approve it before the meeting of the commissioners court. A claim, bill, or account may not be allowed or paid until it has been examined and approved by the auditor...."

Texas law requires that all disbursements of County funds be approved by the County Auditor and the Commissioners Court prior to such disbursement. JOHNSON COUNTY can and will make due disbursements following the approval of the disbursement by Commissioners Court (following the COUNTY'S receipt and review of a proper invoice through the proper COUNTY department responsible for the purchase of the goods or services). JOHNSON COUNTY cannot and does not authorize any entity to directly access County funds. NETDYNAMIC understands that the JOHNSON COUNTY Commissioners Court normally meets on the second and fourth Monday of each month or the day following such Monday if the Monday is a County holiday. NETDYNAMIC further understands that invoices must be received by the COUNTY **not less than fourteen (14) days prior** to the Commissioners Court meeting in order for a payment to be reviewed by the necessary departments and offices and placed on the "bill run" for the Commissioners Court.

5.3

JOHNSON COUNTY does not authorize NETDYNAMIC or any entity to initiate debit entries to JOHNSON COUNTY'S account at any financial institution. Any provision in any document authorizing an entity to access COUNTY funds or financial accounts electronically or otherwise and to make withdrawals or transfers of such funds is hereby deleted and is of no effect and the Agreement shall be deemed modified to comport with payment procedure prescribed by Texas law for Texas counties.

6.1

No officer, member, or employee of COUNTY, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project or purchase is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project or purchase shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.,* as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that JOHNSON 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 Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information COUNTY reasonably believes that **NETDYNAMIC** might lawfully seek to claim as confidential, then COUNTY will forward the request to **NETDYNAMIC.** It shall be the obligation of **NETDYNAMIC** to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be

withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with **NETDYNAMIC** in making such submission to the Texas Attorney General's Office. **NETDYNAMIC acknowledges and understands that <u>contracts</u>, <u>agreements</u>, <u>payment</u> and <u>revenue</u> of a political subdivision of the State of Texas are public information and are <u>not confidential</u>.**

6.3
Services and products provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4
Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5
It is understood and agreed that JOHNSON COUNTY will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

6.6
JOHNSON COUNTY shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1
NETDYNAMIC certifies that pursuant to Section 231.006 of the Texas Family Code (regarding unpaid child support) that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. **NETDYNAMIC** hereby certifies that it is not ineligible to receive State or Federal funds due to child support arrearages

7.2
NETDYNAMIC verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. **NETDYNAMIC** verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

7.3
NETDYNAMIC verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of

the contract against a firearm entity or firearm trade association.

7.4

NETDYNAMIC verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

(1) does not boycott energy companies; and

(2) will not boycott energy companies during the term of the contract.

In this provision:

(1) "Boycott energy company" has the meaning assigned by Section 809.001.

(2) "Company" has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.

(3) "Governmental entity" has the meaning assigned by Section 2251.001.

7.5

At any time following the expiration of 365 DAYS from the execution of the contract, COUNTY may terminate the contract at its discretion, without charges for unutilized term, or penalty of any kind, by giving COMPANY 90 days written notice of such termination. This provision shall not be deemed to conflict with any other provision allowing JOHNSON COUNTY to terminate the contract upon a shorter or lesser notice.

7.6

NETDYNAMIC certifies by signature of its authorized representative on this document that it does and will so long as this Agreement is in effect comply fully with Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19) and Section 5949 of the National Defense Authorization Act for Fiscal Year 2023 (NDAA FY23) and with any additional existing and future "China Tech Prohibitions" promulgated or enacted by the Unites States Government.

7.7

NETDYNAMIC certifies by signature of its authorized representative on this document that it complies with the China Tech Prohibitions and any products used during the professional services will also comply with the "China Tech Prohibitions".

7.8

Further, **NETDYNAMIC** certifies by signature of its authorized representative on this document that it will not use any products or equipment on this project that does not comply with the "China Tech Prohibitions".

8.1

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of JOHNSON COUNTY and signed by the Johnson County Judge or the COUNTY employee or official to whom authority has been explicitly delegated by the Commissioners Court.

8.2

Notwithstanding any other provision in this Addendum or the associated documents, to the extent **NETDYNAMIC** is being contracted to provide information technology and services or to maintain and make available information for use by JOHNSON COUNTY and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of JOHNSON COUNTY, TEXAS or the State of Texas or a political subdivision thereof.

8.3

To the extent NETDYNAMIC is being contracted to provide construction management services, construction services or engineering services and to accumulate data and information then NETDYNAMIC shall make any accumulated data, records or information available for use by Johnson County. Accumulated data, records and information are and shall be the property of Johnson County, Texas or the State of Texas.

8.4

At the termination of this Agreement, to the extent NETDYNAMIC possesses or controls access to JOHNSON COUNTY data, upon request by COUNTY, NETDYNAMIC must copy the data to a storage medium in common use at the time or as agreed to by the Information Technology Department of JOHNSON COUNTY and deliver such medium and data to JOHNSON COUNTY INFORMATION TECHNOLOGY DEPARTMENT. NETDYNAMIC recognizes such data is data of the State of Texas or a political subdivision thereof and must be maintained according to the laws of the State of Texas governing the retention and storage of such data. Destruction of such data contrary to law and contrary to the rules promulgated by the Texas State Library and Archives Commission may be subject to criminal prosecution and civil liability.

8.5

All provisions of the agreement are modified such that in no event would JOHNSON COUNTY have less than 120 days from notice of termination of the Agreement to secure any

data or records in a useable and readable format. **JOHNSON COUNTY'S** securing of such data or records is intended to be done and will be allowed to be accomplished in a common and economically efficient method extant at the time of extracting, copying and securing such data and records.

8.6

The parties agree Johnson County is **NOT** bound and shall not be bound to or liable for any condition, duty, obligation or requirement that is set forth only by reference to additional Documents that are not part of the physical document approved by the Commissioners Court and made part of the minutes of the Johnson County Commissioners Court. Provisions which **COMPANY** seeks to make terms of the contract or agreement by references to links or websites for contract terms are rejected by **JOHNSON COUNTY** and **CANNOT** and **WILL NOT** be enforced against **JOHNSON COUNTY**.

8.7

JOHNSON COUNTY is not subject to any provision that may be changed without notice or that may be changed without specific overt consideration and approval by the Commissioners Court of Johnson County acting on that change, modification or amendment to the contact or its terms occurring after the date of the execution of this Addendum.

8.8

Notwithstanding any provision set forth in the Master Services and Purchasing Agreement for Agency or any other document put forth by **NETDYNAMIC, JOHNSON COUNTY** does not waive any rights or remedies available to a Texas political subdivision pursuant to Texas law. This provision supersedes any contrary provision.

8.9

NETDYNAMIC will not factor its receivables (from **JOHNSON COUNTY**) to any company or bank without the permission of the Johnson County Commissioners Court.

9.1

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to **JOHNSON COUNTY** in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and <u>any provision to the contrary is hereby deleted</u>. *THE TERMS OF THIS JOHNSON COUNTY CONTRACT TERMS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENT(S) PUT FORTH BY <u>NETDYNAMIC</u> IS HEREBY DELETED.*

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

Christopher Boedeker
As Johnson County Judge

Date   8-12-24

Attest: _____
County Clerk, Johnson County

Date   8-12-24

NETDYNAMIC:

Signed by:
Christopher kim
D47A0EBBFFEE45F...

8/5/2024

Signature of Authorized Person

Date

Christopher Kim

Printed Name of Authorized Person

CEO

Position of NETDYNAMIC Authorized Person

INFORMAL BIDS (QUOTES) TABULATION FORM

INSTRUCTIONS FOR COMPLETION:

1) Per Policy, purchases from $10,000 and $49,999.99 require at least two (2) vendor quotes.

2) Vendor quotes must be in writing (i.e. Vendor Quotation form; Vendor email; Internet Quote, etc.).

3) All awards should be made to the vendor whose proposal offers the "best value" to Johnson County.

4) Awards based on "best value" may consider various factors, including but not limited to:

    (a) Price / Total Cost of Ownership, (b) Product/Service Quality, (c) Availability, (d) Vendor/Product Reputation, (e) Vendor's Ability to Meet County Needs,

    (f) Client References, (g) Past Experience with the County, and/or (h) any other relevant factor that ensures best value to the County, (i) Warranty.

5) Upon consideration of all factors, if all bids meet the County needs, the award should be made to the lowest bidder.

				VENDOR #1		VENDOR #2		VENDOR #3		VENDOR #4		VENDOR #5	
Informal Bids Tabulation Summary		Vendor Name:		ATS360		Neogov							
		Gigabyte											
		Enter "X" for selected vendor											
PRODUCT/SERVICE DESCRIPTION	ITEM	QTY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
Year 1	1	1	ea		$40,557.79		$47,406.05		$0.00		$0.00		$0.00
Year 2	1	1	ea		$40,557.79		$51,351.00		$0.00		$0.00		$0.00
Year 3	1	1	ea		$28,957.79		$71,891.43		$0.00		$0.00		$0.00
Year 4	1	1	ea		$28,957.79		$92,431.80		$0.00		$0.00		$0.00
Year 5	1	1	ea		$28,957.00		$105,702.00		$0.00		$0.00		$0.00
	1	1	ea		$0.00		$0.00		$0.00		$0.00		$0.00
	1	1	ea		$0.00		$0.00		$0.00		$0.00		$0.00
	1	1	ea		$0.00		$0.00		$0.00		$0.00		$0.00
	1	1	ea		$0.00		$0.00		$0.00		$0.00		$0.00
	0		ea		$0.00		$0.00		$0.00		$0.00		$0.00
	0		ea		$0.00		$0.00		$0.00		$0.00		$0.00
	0		ea		$0.00		$0.00		$0.00		$0.00		$0.00
* DISCLOSURE NOTICE: By signing below, I hereby certify that all quotes recorded include all the firms that have been contacted for bids and their replies are reflected accurately on this form.		SUBTOTAL			$167,988.16		$368,782.28		$0.00		$0.00		$0.00
		TOTALS			$167,988.16		$368,782.28		$0.00		$0.00		$0.00

All awards should be made based on "Best Value" to the County. Please write a short summary below of why the vendor chosen is the best value _if it is not the lowest bid._

DIR / 24 Month Term / Prices does not include any applicable Taxes, Municipal or Regulatory fees.

* Name of Person Completing this Form: _____   *** Signature:** _____

NOTE: THE COMPLETED & SIGNED TABULATION FORM <u>AND</u> COPIES OF ALL QUOTES MUST BE ATTACHED TO THE PURCHASE REQUISITION.